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IN THE FAMILY COURT

ZE22C50058

SITTING AS EAST LONDON FAMILY COURT AT THE ROYAL COURTS OF JUSTICE

**Before Her Honour Judge Lazarus
Handed down 29 March 2023
NCN: [2023] EWFC 171**

B E T W E E N:

LONDON BOROUGH OF X

M

F

Y

Z AND U

Representation:

Cleo Perry KC and Thomas Pye instructed by a local authority solicitor for the LA

Andrew Bagchi KC and Sima Kothari instructed by Forida Hakim of Duncan Lewis for M

Brendan Roche KC and Anthony Forde instructed by Fathema Khanom of Edwards Duthie Shamash Solicitors for F

Mark Twomey KC and Victoria Roberts instructed by Davinder Sehmi of Matwala Vyas LLP for the Children's Guardian, litigation friend for Y

Joanne Brown and Amean Elgadhay instructed by Ajanta Sinha of Philcox Gray Solicitors for the Children's Guardian, litigation friend for Z and U

J U D G M E N T

INTRODUCTION

1. I am concerned with three members of a sibling group of four. Y a boy born in 2010, who will soon be 13, Z a boy born in 2013, who is 9, and U a boy born in 2017, who will soon be 6.
2. The children's adult brother A is not directly involved in these proceedings. He is 23 and was convicted in 2021 of the possession of indecent images of children and is on the Sex Offenders Register. He has not lived with the family since his arrest in mid-2020.
3. This case arises from Z making a number of allegations in early March 2022 at school and to the police.
4. This hearing is a Fact Finding Hearing where the LA seeks findings that Y has perpetrated sexually and physically abusive behaviour against his younger brother Z.
5. The LA also seeks a range of findings against the parents, asserting that they have failed to protect, supervise or guide the children adequately; lacked insight and acceptance; minimised, denied or otherwise failed to believe Z's allegations, calling him a liar; and minimised or attempted to deflect attention from relevant history relating to the boys' older brother A.

THE LAW

6. The principles that apply in findings of fact hearings are well known. In briefest summary: the standard of proof is the civil standard i.e. the simple balance of probabilities **Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35**; and where I describe events or make findings, I have applied that balance of probabilities, the burden of proof being on the local authority which is here seeking the findings.
7. In making any findings I have considered all the evidence and submissions, even if every potentially relevant factor may not be specifically cited. It would be unrealistic and disproportionate to include and refer to every possible factor (cf. paragraphs 37 and 39 per Black LJ in **Re T-B-N (Children) [2016] EWCA Civ 1098**).
8. Those findings are reached with full awareness of and regard to all the material and all the other findings or conclusions set out elsewhere. This judgment is not simply a linear function, but an aggregate of all the considerations I have applied, and each part has been written with an awareness of the content of the other parts.
9. The law particular to this type of fact finding exercise was very helpfully set out and considered in depth by MacDonald J in **P (Sexual Abuse: Finding of Fact Hearing) [2019] EWFC 27**. I have reminded myself of his observations, and the 'difficult and challenging forensic context' that he describes in paragraphs 1-9.
10. To avoid adding to the length of this judgment, I do not repeat here his detailed exposition of: the legal framework at paragraphs 240-272; issues relating to evaluating allegations made by children and ABE practice at paragraphs 570-604 and 853-859; and

the guidance relating to risk factors and inherent probabilities at paragraphs 1049-1059; and the 'cardinal principles' he set out at paragraph 1245, but I have reread and noted the principles and guidance he sets out. I echo his concerns and adopt his observations. I have applied the relevant principles as is appropriate for this case. In particular, I have carefully noted his observations in regard to: forensic rigour; hearsay evidence; record keeping; truth and lies; questioning of children; evaluation of allegations made by children; and evaluation of risk factors and of the overall picture.

11. His analysis in relation to 'Truth and Lies' at paragraphs 262 to 266 in **P [2019]**, has been further built on by the Court of Appeal decision in **Re A, B and C (Children) [2021] EWCA Civ 451**.

12. At Paragraphs 57 and 58 of **Re A, B and C**, Macur LJ said:

"55. Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:

"1. A defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by her evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt.

2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D's lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. ..."

56. In Re H-C (Children) [2016] EWCA Civ 136 @ [99], McFarlane LJ, as he then was said:

"99. In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of Lucas in giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the "lie" has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.

100 ... In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt."

57. To be clear, and as I indicate above, a 'Lucas direction' will not be called for in every family case in which a party or intervenor is challenging the factual case alleged against them and, in my opinion, should not be included in the judgment as a tick box exercise. If the issue for the tribunal to decide is whether to believe A or B on the central issue/s, and the evidence is clearly one way then there will be no need to address credibility in general. However, if the tribunal looks to find support for their view, it must caution itself against treating what it finds to be an established propensity to dishonesty as determinative of guilt for the reasons the Recorder gave in [40]. Conversely, an established propensity to honesty will not always equate with the witness's reliability of recall on a particular issue.

58. That a tribunal's Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its

principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis, or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court."

13. Additionally, the Court of Appeal has provided important recent guidance as to the assessment of oral evidence in the case of **A (A Child) (Rev 1) [2020] EWCA 1230**. The significant remarks of Leggatt J in **Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor [2013] EWHC 3560 (Comm)** which addressed the fallibility of and pressures upon memory and our erroneous assumptions relating to recollection (and which were also considered by the Court of Appeal in **Kogan v Martin and others [2019] EWCA Civ 1645**), were highlighted by King LJ, and, while the judgment did not undermine the importance of oral evidence in family cases, she stated:

"41. The court must, however, be mindful of the fallibility of memory and the pressures of giving evidence. The relative significance of oral and contemporaneous evidence will vary from case to case. What is important, as was highlighted in Kogan, is that the court assesses all the evidence in a manner suited to the case before it and does not inappropriately elevate one kind of evidence over another.

42. In the present case, the mother was giving evidence about an incident which had lasted only a few seconds seven years before, in circumstances where her recollection was taking place in the aftermath of unimaginably traumatic events. Those features alone would highlight the need for this critical evidence to be assessed in its proper place, alongside contemporaneous documentary evidence, and any evidence upon which undoubted, or probable, reliance could be placed."

14. In relation to allegations against the parents of failure to protect, King LJ, in **Re L-W (Children) [2019] EWCA Civ 159** stated: _

"62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.

63. Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that

parent, even though that parent may have been wholly exonerated from having caused any physical injuries.

64. Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in *Re J*, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm."

15. King LJ repeated what she had said in **Re L-W** in her judgment in **G-L-T (Children) [2019] EWCA Civ 717**, and added:

"72. I repeat my exhortation for courts and Local Authorities to approach allegations of 'failure to protect' with assiduous care and to keep to the forefront of their collective minds that this is a threshold finding that may have important consequences for subsequent assessments and decisions.

73. Unhappily, the courts will inevitably have before them numerous cases where there has undoubtedly been a failure to protect and there will be, as a consequence, complex welfare issues to consider. There is, however, a danger that significant welfare issues, which need to be teased out and analysed by assessment, are inappropriately elevated to findings of failure to protect capable of satisfying the section 31 criteria.

74. It should not be thought that that the absence of a finding of failure to protect against a non-perpetrating parent creates some sort of a presumption or starting point that the child/children in question can or should be returned to the care of the non-perpetrating parent. At the welfare stage, the court's absolute focus (subject to the Convention rights of the parents) is in relation to the welfare interests of the child or children."

16. In considering whether the threshold criteria are met it is important to recall the reminder given by the President of the need to link the facts relied upon by the LA with its case on threshold, at paragraph 12 of **Re A [2015] EWFC 11**:

"The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance". May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion

does not follow naturally from the premise. The local authority's evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts."

KEY ISSUES TO CONSIDER

17. Whether Z experienced sexual and/or physical assault.
18. In determining that, the following need to be considered:
 - a. What did he say?
 - b. What did he mean by what he said?
 - c. In the light of the surrounding circumstances and context, is what he said reliable?
 - d. If it is reliable, how much weight should be attached to it and balanced against the weight to be given to the rest of the evidence?
19. If he experienced assault, whether it is possible to identify the perpetrator.
20. Whether the parents have acted in the harmful manner asserted by the LA.

THE PARTIES, THEIR POSITIONS & RELEVANT CIRCUMSTANCES

THE LOCAL AUTHORITY -

21. The LA's case set out in its Schedule of the findings covers two distinct areas: sexually and physically harmful behaviour against Z by Y, and the parents' responses.
22. LA's SCHEDULE OF FINDINGS
 - a. SEXUALLY HARMFUL BEHAVIOUR - There are six amended counts of sexually harmful behaviour against Y set out.
 - b. Of note, the LA modified the findings sought during and near the end of the hearing. This appeared to arise from the closer attention being paid during the hearing to the details of what was said and what may have been meant or mis/interpreted.
 - c. In particular, the LA stepped back from seeking a finding that Y had perpetrated anal rape by penetration on Z and set out its clarifications on an amended Schedule.
23. It was suggested by counsel that in fact anal rape/penetration had never been fully pleaded in those terms in the Schedule in any event by previously instructed counsel. However, I note that it was set out in exactly those terms in the chronology provided to me at the outset of this hearing, and was clearly the interpretation applied by the police and others following Z's interviews, including in accounts in various LA documents and reports.
24. Additionally, the LA stepped back from claiming that Z had experienced sexually harmful behaviour on each of the three days prior to his interviews on 7.3.22, but amended to leave the timing element vague.

25. These are small but important signs of some of the confusion and difficulty arising around Z's allegations and the great care required to be taken in understanding the evidence and pursuing such a case.

26. PHYSICALLY ABUSIVE BEHAVIOUR – Although it is alleged that ‘the children’ have suffered and are at risk of physical harm, the detailed allegations are all about Z and against Y and some of which appear duplicatory:

- Y has physically abused Z on a frequent and regular basis and he has scratched, kicked, slapped, pinched and punched Z.
- Z has stated that:
 - (a) “He kicks my legs, slaps and kicks”.
 - (b) “Firstly he slapped me, he kicked me and then he scratched my neck”
 - (c) “He always punched me”
 - (d) “My brother kick me”
 - (e) “Then he kick me on my face”
 - (f) “My brother always slap me really hard”
 - (g) “He pinched me”
 - (h) “He then said that his older brother Y Year 7 at S school did it. He said that he couldn’t remember when but that his brother slaps him nearly every day. . .but the slapping happens every day”
 - (i) “Z said that . . He pinches me here [points to his neck on the left side] did it last Friday night. I was going to sleep on Sunday. He always farts on my face, kicks me on my leg it hurts. He is stronger than me”.
- Y caused a notable scratch to Z's face and neck:
 - (a) “did a scratch on my neck”
 - (b) “I spoke with Z on the morning of the 7th March 2022 and I asked him again about the scratch. He repeated that he sleeps in the same bed with his older brother who pinches and scratches him when he Z tries to punch him away and when it is too hot in bed” He then said that his older brother Y Year 7 at S school did it. He said that he couldn’t remember when but that his brother slaps him nearly every day. . .but the slapping happens every day”.

27. SEXUAL & PHYSICAL ABUSE – EVIDENCE – the four pieces of primary evidence relied upon by the LA as setting out Z's allegations are as follows:

a. The TA Discussion: Z's discussion with his teaching assistant EE on Friday 4.3.22 as recorded by her in J Primary School's CPOMS record:

“I was talking to Z before the end of the school today and he told me about a scratch he had on his neck. He had already gone to the office during playtime where it was marked as an accidental scratch caused by his brother. I assumed it was by his younger brother U. However, he told me that he sleeps in the same bed with his 20 or so year old brother who intentionally pinched/scratched him because Z tried to push him away because it was too

hot in bed. He cried and apparently his mother sent the older brother to read the [holy book].”

EE subsequently expanded on the details and context in her statements and oral evidence.

- b. The Deputy Head Discussion: Z’s discussion with one of the deputy head teachers and Safeguarding Leads GG on the morning of Monday 7.3.22 as recorded by her in the CPOMS record and summarised in the MASH referral form written up by her:

“Follow up conversation with Z this morning.

Z disclosed to a TA on Friday 4/3/22....

I spoke with Z this morning and asked him again about the scratch. He repeated the same story and said that his older brother Y in Year 7 at S school did it.

He said that he couldn’t remember when but that his brother also slaps him nearly every day. He said this happens about the use of the computer but also in bed as there is no space in the bed.

He said that he has no marks or bruises on his body but the slapping happens every day.

He then said that his older brother [touched his private parts]. –

He didn’t say when this last happened or how often this happens.

He said that his Mum knew about the scratching and slapping but that he hadn’t told her about the penis.

HH phoned MASH.

MASH form sent.

II aware of full disclosure.

[Teacher] aware of sexual abuse disclosure.

[Colleague] to be made aware that there has been a sexual abuse disclosure.

We were advised over the phone not to inform the parents and a SW will come to school to talk to Z today.”

GG subsequently expanded on the details and context in her statements and oral evidence.

- c. The Police Initial Questioning: Z’s responses to an initial questioning exercise undertaken at the school by DC B and DC D in the early evening of Monday 7.3.22, as recorded by the social worker CC who was also present and which she entered into her Post Referral Visit form in the LA’s records on 8.3.22:

“When asked about to describe the bedroom Z said that he sleeps with his brother on the top end Y sleeps on the bottom end. “He pinches here (points to his neck on the left side), did it last Friday night. I was going to sleep to Sunday. He always farts on my face, kicks me on my leg it hurts. He is stronger than me. He has no visible bruises or marks.

Z said that was everything.

GG – Assistant head teacher was present in the room she was asked to read the referral (conversation that she previously had with Z). She read few lines of the referral and

Z said that he remembered having the conversation with her and then begin to say: "He kicks my legs, slaps, and kicks. He always sees my private". When asking about what private part is. Z responded that "private is something that you can't see on other children, the private is to do wee and poo." Z pointed to his genitalia area made the gesture and said "He holds with his two hands and turns around. He kicks my bum so many times, I don't like it, it hurts. Z was asked how the brother touched him. [Z provided an account of touching by his brother]

When asked if his brother ever asked him to touch his body/ any part, Z said that his brother never asked him to touch him.

He was asked if he told anyone. Z said that he told his mother, and she asked the older brother to read the [holy book] and the father said if it happens again the brother will be in trouble.

Z explained that the name of the cream that his brother uses is Hyddromol (sic) cream, there is one tub on his mother's bedroom and another one on their bedroom.

Z went on explain [and gave an account of Y's actions and when these took place.]- By the end of the interview Z was asked how he was feeling and if he wanted to say anything else. He stated that he was feeling good and had nothing else to say.

Observation:

Z was observed wearing clean school uniform, articulate child with his words, able to express his views but, he gives the impression of being quiet and respectful. In addition, it is my professional opinion that Z might have some underline (sic) needs, but I am mindful that his presentation when talking to him it could be due to possible trauma that it might explain his behaviour."

CC subsequently expanded on the details and context in her statements and oral evidence.

- d. The ABE Interview: Z's ABE interview conducted by DC B at the police station later that night between 21.48 and 22.25 on 7.3.22, and of which there is both a video and a transcript. This interview was heavily relied upon by the LA but is also the focus of heavy criticism. By the end of this hearing, although the LA's submissions included and relied upon material from the ABE interview, the emphasis began to steer more towards a reliance on Z's initial and arguably less procedurally problematic accounts.

28. Broadly, the LA relies on:

- what is described as a 'consistent core narrative' of Z being physically assaulted by Y, and of Y placing his penis 'in' Z's bottom;
- apparent clarity as to which brother is being referred to;
- illustration of his account with details, gestures, physical demonstrations and descriptions of sensations;

- descriptions that are idiosyncratic, from a child's perspective and from genuine experience, not from pornography or indecent images;
 - that when asked if he had ever told M about these things Z volunteered in his ABE "No, my brother say's it's a private secret".
29. Despite Y's denials, the LA relies on his making no complaint of any injustice nor saying that Z has lied. The closest Y has come to making such a suggestion is the rare comments provided by him to his foster carer on 7.4.22 that Z had lied, and in response to the social worker CC on 8.4.22 that Z may have seen something on YouTube and made it up as a result. The LA asserts that this is consistent with the minimising and externalising family response to Z's allegations.
30. The LA also asserts that the parents' response to Z's allegations is one of minimisation, denial, deflection and attempts to undermine his veracity. The LA's submissions rely on asserting that the parents have shown a 'blanket denial' of any violence at home and the denial or deflection of 'any fact that might indicate the veracity of Z's allegations' to claim that these responses are themselves deliberate lies that are borne of a fear of the truth and thereby somehow underpin Z's veracity.
31. EMOTIONAL HARM – This primarily flows from any findings the court makes in relation to the sexually and physically abusive behaviour, and from the LA's claim that the parents have accused Z of lying albeit that there is no evidence to demonstrate that they have done so directly. The first social worker CC claims that the parents repeatedly told her that Z was a liar. Z was at home for a month after his allegations were made before being moved into foster care, and it is asserted that he must have picked up on his parents' attitude.
32. FAILURE TO PROTECT – The parents inevitably accept the facts of A's convictions, and also accept that they have needed more help with understanding the impact of the internet given their lack of technical knowledge and skill, particularly given A's convictions. The parents have undertaken an internet dangers course and the M accepts that she could have assisted the children better to understand internet risks and their bodily changes and puberty.
33. The LA however challenges their true understanding, insight and acceptance of the issues relevant to A's convictions, and allege ongoing minimisation of A's convictions, and a lack of appropriate boundaries, guidance and supervision. The LA asserts that this has included failing to disclose A's existence and the previous involvement of social services, and encouraging the children to conceal A's existence.
34. The LA also makes wide-ranging assertions of the parents' joint and individual failures that cover their responses at the time of the alleged abusive behaviour and their subsequent attitudes and insight:
- Z told his mother and father about the physical abuse by Y:

- (a) “He said that his mum knew about the scratching and slapping but that he hadn’t told her about the penis”
- (b) “On the 7th March 2022 Z was asked if he had told anyone, Z said that ‘he told his mother and she asked the older brother to read the [Holy book] and the Father said that if it happened again he will be in trouble’
- The Mother knew or ought to have known about the sexual abuse: Z was asked how did that [*sexual abuse*]* stop “A: It stopped when mum – mum came . . .” Q: Why did mum come? “A: Because he – because the building was like shaking” Q: So what happened when mum came in? “A: My brother stopped”. (*NB – I note that the clarification of *that* as meaning *sexual abuse* is highly contentious given the preceding questions and answers during the ABE from which this is taken.)
- The Mother was not surprised about Z’s allegations against his brother but she was surprised that he had given the information to professionals.
- The Mother and Father lack insight and acceptance of the seriousness of the sexual abuse reported by Z:
 - (a) ‘F and M’s response to the local authorities concerns suggested that they either did not view the children’s sexualised behaviour as harmful or they did not accept the evidence’. (b)The Mother and Father believe that the internet is the reason for the sexual abuse.
- Z is unlikely to be able to confide in his parents in future and this raises concern about their capacity to safeguard him and the three children in the future.
- The Mother and the Father have minimised and denied the truth of the sexual abuse reported by Z:
 - (a) Accusing Z of lying and describing him as a ‘liar’
 - (b) The Mother and Father accused Z of ‘attention seeking’
 - (c) The parents’ initial response to the allegations of sexual abuse was to try and dismiss them
 - (d) When spoken to about the sexual abuse the Father cried and stated several times that Z is a liar.

35. In relation to allegations of failure to protect the LA relies on the evidence of the social workers CC and AA, various recordings in the documents and the parents’ own evidence.

36. LA WITNESSES – Witnesses that were called by the LA were as follows:

37. The first social worker involved in the case was CC. She made a note of a discussion held at the school between Z and the police in the early evening of 7.3.22. She discussed matters with M that evening, and again with both parents on 9.3.22. She visited Z and U at school on 17.3.22. Following the grant of the Interim Care Order on 6.4.22 she visited Y at his foster home on 8.4.22.

38. The current social worker AA. She clarified a number of important matters relating to more recent developments and the inexplicable instruction of two different in-house LA social workers to undertake 'assessments' while the fact-finding exercise was still pending. She also gave evidence regarding her discussions with M and noted by her in social work records, in particular relating to M meeting with the foster carer, Z and U on the street after school and speaking in their South Asian language, spoken at home, with Z.
39. Five witnesses from J Primary School: EE the teaching assistant, GG a deputy head teacher, HH the head teacher, II another deputy head and FF a teacher.
40. DC BN, the current officer in charge of the police investigation, and DC M, the arresting officer.
41. I also heard evidence briefly from DD, a social worker engaged in an assessments team at the LA's in-house service. She was the author of an 'assessment' carried out in summer 2021. I was also due to hear evidence from BB, a child protection professional with training and/or experience in psychology, psychotherapy, domestic abuse and family risk assessment. BB is an LA employee at their in-house service. For reasons set out below the LA withdrew from reliance upon any of their evidence.
42. THE LA'S APPROACH, INAPPROPRIATE ASSESSMENTS & 'CULTURE OF BELIEF' –
43. It is appropriate to take a moment here to explore the LA's approach and any implications for this fact-finding exercise, particularly in the context of its amended position in relation to certain evidence and findings.
44. DD's assessment purported to follow a Letter of Instruction to an in-house service that appears to have been agreed by the parties in May 2022. This exercise, other than a direction to identify the terms of a possible Letter of Instruction, was never approved of nor overseen by the court before it was undertaken and the assessment was filed. No Part 25 application was made by the LA and DD's CV was not circulated. DD was a social worker with child protection experience and less than 10 years post-qualification practice. She had none of the critically important training and skills to engage with a complex task of assessing risk of sexual harm as opposed to a more straightforward parenting assessment. She had never before dealt with a case involving alleged sexual abuse and sibling-to-sibling allegations. The assessment involved direct interviews with the parents and children, including direct work with Y exploring 'the allegation against him'.
45. It also became clear that DD had even got basic aspects of the allegations wrong (paragraphs 2.3. and 8.10 with references to A and to Z reading the holy book), and she had largely copied in the wording of CC's summary from her Post Referral Visit form dated 8.3.22 (and which in itself has been the subject of concern as to its inaccurate framing of the original referral from the school and which I discuss further below). This summary (paragraph 2.4.) included the following words taken from CC's form: "Z

reported that [Y had raped Z]. This was effectively treated by DD as an accurate recording of Z's true account.

46. Moreover, she set out her opinions as to what Z had experienced, assuming a straightforward truth was evident from his allegations namely that he had been a victim of sexual abuse by Y, contrary to the terms of her instruction which instructed her to refrain from reaching such opinions, and on which she had predicated many of her discussions and analysis. For example: "*Z's detailed account of this sexual assault suggests that it is likely that he has experienced significant harm as a result of sexual abuse.*"
47. It also emerged from her oral evidence that she considered that the social work colleagues with whom she was discussing the case also shared the belief that Z had been sexually abused by Y. She held a number of meetings in May and July 2022 with the current social worker AA and their respective team managers.
48. Both in terms of its approach and content this report appeared to cover ground which it is well known should rarely if ever be undertaken prior to a critically important, contested and highly sensitive fact-finding hearing. It was also in direct contravention of the so-called Letter of Instruction. Attempts were then made during earlier case management to clarify DD's understanding of her approach and remit, without her responses shedding much light.
49. The LA had initially sought to rely on a great deal of the content of her assessment, including reported discussions and analysis as to key findings sought by the LA. It quickly became clear during DD's oral evidence that the situation was indeed as worrying as I have set out above and ultimately the LA withdrew reliance on her assessment.
50. The same predicament arose in relation to yet another 'assessment' undertaken by the LA by another social worker BB at another in-house resource, purportedly to identify the family's needs and what the LA could identify and provide to meet those needs. This exercise appears to have arisen from a repeated insistence by Y's Children's Guardian and the parents that specialist work was required to assist the parents with improving their insight and coping with the impact and implications of A's convictions and sexual risk. This led to a number of directions made at case management hearings in the summer and autumn of 2022, with a specific recommendation from Y's Children's Guardian that an organisation known as NCATS be considered and that appropriate work could be done prior to the fact-finding exercise on the basis of A's convictions. What then inexplicably arose instead was this further assessment by a service that normally provided domestic abuse work to families. NCATS was not adequately considered and the court's directions were not followed. The assessment process was undertaken in November 2022 and the report filed in December without proper consultation with the parties or permission from the court.
51. A number of concerns were apparent. It turned out that BB had herself raised a worry in email correspondence with the team manager that her service was not well suited to

this task as their specialist area was domestic abuse. It yet again led to further interviews with the parents and reports of discussions with them and on which the LA again had sought to rely. An independent interpreter was not used, but a colleague of BB stepped in to interpret whom it was claimed was an appropriate speaker of the parents' South Asian language. Instead of assessing whether this service could meet the needs of the family, BB effectively produced yet another misconceived risk assessment asserting that the parents were unable to protect the children.

52. Additionally, for example, BB reported as follows: "*he [F] wanted to ask how Z had learned about these things. When I put to him that Z had clearly disclosed learning about these things when sexually assaulted by Y, ...*" (my emphasis). This statement clearly rests on a number of important assumptions, prior to the fact-finding hearing; principally that there was a 'clear disclosure' establishing 'sexual assault' and which was itself the source of all Z's knowledge, and which led BB to feel entitled to assert this belief in Z's allegations.
53. The source of BB's information was a briefing from the current social worker AA, and an hour-long discussion with her. BB set out the formal referral text at the start of her report:
- 'This was the information detailing the reason for referral sent over by Social Worker AA:*
- "07/03/2022 Children Social Care received a referral from the school as Z (8) made allegations on Friday (04/03/2022) that he has been scratched by his brother who is 20 years old who he shares bed with. Z tried to push him away in bed as it was too hot. He reported to Mother who asked the older brother to read the holy book. Z spoken to on (07/03/2022) morning, and he stated that his brother (Y - 11) is in S school and brother kicks and punches him in bed - this has been going on for a long time. Brother has [sexually assaulted and raped Z.]*
54. It is disappointing but unsurprising to see that this briefing is also another cut and paste from the first social worker CC's initial documentation following the school referral which appears in the Post Referral Visit form, the Section 47 Outcome form and Strategy Meeting form, all completed on 8.3.22. There is even the same misspelling of the cream 'hyddromol'. It is clearly also the same source as that summarised by DD in her earlier assessment. What is particularly concerning is that this entry uses phrases and makes the association between the implied use of Hydromol cream as a lubricant and the potential rape.-This wording in this section is then repeated into a wide range of further documents within these proceedings, using this wording and this set of associations.
55. It is notable that the phrases recorded were nowhere used in the MASH referral form completed by the Deputy Head GG at the school nor elsewhere in any interview or reported speech by Z. It is notable that nowhere did Z suggest that cream was used as a lubricant, nor did he associate that cream with Y raping Z.

56. What appears to be the very first use of this wording is however entered by an unknown official into the form that appears to have been generated as a result of the referral telephone call made to MASH by the Head Teacher HH with the Deputy Head GG at around midday on 7.3.22. (The name VA appears under a column headed 'Management Advice', but no name is entered under the columns headed 'Case Noted' or 'Contact Created'.)
57. What is also notable is that GG's CPOMS note and the school referral MASH form that she then filled out, shortly after that call, containing her summary of the discussion she had with Z earlier that morning, does not contain any reference to 'bend over', 'back passage' or penetration with the use of a lubricant cream. It therefore appears to be likely that those words were imported into the MASH note by an unknown official who had received the Head Teacher's call and unlikely and unsafe to treat those words as having been used by Z. The words entered may well have been a rapid and brief attempt to summarise what the official thought was the import of a referral call and was not intended an accurate record of a child's allegations. But in doing so, and by CC then lifting those words from such a record into her own documentation once she had picked up the referral, it has thereby imported that unknown person's set of words, assumptions or connections into the accounts which are then repeated many times to many other professionals and begin to take on the appearance of some sort of purported detail of Z's account.
58. It is important to pause here and consider CC's evidence in more detail. She had not had any ABE training and had no ABE trained manager to support her. She was not familiar with sexual abuse cases and had found the experience of hearing Z's discussion with the police 'very disturbing'. Although highly competent in English, it is not her first language. She made the entry from notes and memory on 8.3.22 the day after her referral visit to the school on 7.3.22. She destroyed the notes. The section from which the relevant passage in DD's and BB's assessments is taken is headed 'Current Concern' in the Post Referral Visit form and CC confirmed that this section related back to the original MASH referral. It did not relate to the discussion she witnessed at the school between Z and the police officers which is noted under the heading 'School Visit'.
59. I therefore consider it is highly likely that CC's entry under 'Current Concern', and which we have seen then went on to be repeated elsewhere, is effectively an absorption or repetition of the words used in the MASH Note document created as a result of the telephone call from the school in the manner described above and were not CC's own, nor appear to be those of GG reporting any words used by Z. However, these words were then employed and perpetuated by CC and others without apparent further thought, and were repeatedly but erroneously used within the LA as an accurate summary of Z's initial complaints. They were also used to fuel the 'information' or 'referral' to both DD and BB for their respective assessments, and were therefore at the heart of what they based their assumptions on as to the 'truth' and based their discussions on with the parents and children.

60. CC and AA both asserted that they had remained neutral as to their beliefs in relation to Z's allegations. I note that all the social workers and other professionals involved have almost always used the word 'disclosure' instead of 'allegation', save for the rare exception of a reference to 'allegations' such as by the social worker AA in certain email correspondence. I also note that DD considered that her colleagues with which she discussed the case at meetings shared in the belief that Z was the victim of sexual assault by Y, which meetings included AA and team managers. I also note that CC's own record of her and her team manager's meeting with the parents on 9.3.22 includes the following words which were used as a means of responding to the parents' assertions that Z was lying: "It was explained to the parents that Z provided too many details", with the clear implication therefore that he must be telling the truth.
61. It is also particularly notable that none of the social workers nor team managers involved in this case appear to have taken issue with the inappropriate declarations of belief in Z's reported accounts set out in DD's and BB's assessments. Nor to have either spotted or taken issue with the erroneous interpolation and ongoing use of words and concepts never stated by Z, but which point directly to allegations of anal rape, which were repeated onwards by CC and AA and on which DD and BB relied.
62. The overall picture is extremely troubling and disappointing. Given what appears to be a systemic lack of appropriate training and support for situations such as these, it is perhaps unsurprising.
63. Firstly, this LA should never have given the green light to either of the assessments that were undertaken by DD and BB, let alone on the basis upon which they proceeded. In neither case was there proper scrutiny, approved scope, appropriate expertise, instruction, agreement or permission, nor respect given to the stage of these contested proceedings.
64. Secondly, it is clear to me that the social work professionals involved in this case arrived at and shared an early assumption about Z having clearly disclosed sexually abusive behaviour including anal penetration which they accepted and treated as true – a 'culture of belief'. This was then perpetuated and repeated through various iterations of social work process in this case, including into these purported 'assessments', but will also have lain behind the social workers' discussions with the parents and indeed the children. It will have led to a narrowed insight by those professionals into any of the possible contexts for, or interpretations of, or problems with Z's allegations, and to a lack of an open-minded approach that could look carefully at all sides of the case and from each child's and the parents' perspectives.
65. Thirdly, this approach by the LA undoubtedly also had implications for its approach to Y, and an inability to carefully appraise his responses and behaviour as part of the whole picture. The criticisms made on his behalf are set out later in this judgment when considering Y's particular position.

66. Fourthly, it has also muddied the forensic waters and may have ultimately led (among other things) to the 'Clarifications' of the LA's formal position regarding the findings it now seeks.
67. So what are the implications for the forensic exercise being undertaken by this fact-finding process and in this judgment? Clearly, I welcome the LA stepping back from its reliance on material in DD's and BB's misconceived reports. However, it is equally important to exclude from consideration that Z may have used or implied these particular words I have pinpointed above, which are nowhere found in his own actual or reported speech. I will be focussing in more detail later in this judgment on what determination can be reached as to what he may have said or meant.
68. But it goes a stage further, which is that great care will need to be taken in considering the evidence of CC and the extent to which she may have been affected by the words and concepts included in that MASH note and which she repeats at the outset of her first formal documentation of the case and is then picked up and repeated thereafter by her and others. Equal care will need to be taken when looking at the police initial questioning and the ABE interview as to the extent that their approach may also have been affected, albeit there is not such an obvious similar documentary trail as seen in the LA's documents.
69. Finally, under this general heading, I am grateful to this LA for realising the importance of addressing a wide range of gaps and concerns that emerged during the course of this hearing, and for taking up this opportunity to use this case as an important learning point. I invited the parties to draw up an agreed list of issues for the LA to consider and provide a response to as a positive problem-solving exercise, and I attach this list at Appendix A as an illustration of those many concerns. The LA have quite rightly pointed out that some of these matters cover the work of other agencies and departments, such as V Council, and the training and protocols available to schools, and have properly requested time to provide its response.

MOTHER & FATHER –

70. M was born in 1982 and is now 40 and F was born in 1977 and is now 45.
71. Both parents are of South Asian origin and are of devout faith. They were both born in South Asia and are cousins. They married there at a religious ceremony in 1998 and A was born there in 1999. In 2000 F moved to Europe for work and obtained citizenship in 2004. They undertook a civil marriage ceremony in 2004, and M left South Asia to join F in Europe in 2008.
72. Y and Z were both born in Europe, in 2010 and 2013. They began life as nationals of a South Asian country but acquired nationality of a European country in 2016 following F acquiring a European citizenship. In December 2016 the family moved to the UK and settled in the city of V where U was born in 2017. The family were granted indefinite leave to remain in the UK. Following A's arrest and conviction, and associated

involvement of the family with children's services in V, the family subsequently moved to London in October 2021, leaving A in V.

73. M's and F's first language is that of their origin South Asian country. They can speak and understand some but limited English. F can speak another European language to a basic level having lived there for 18 years but does not read it. They have both been assisted by interpreters at court and in the preparation of their cases. Attention was appropriately paid to more nuanced language differences and a particular dialect speaking interpreter was obtained for F. However, it emerged during his oral evidence that although questions were being interpreted into the relevant dialect for him, he was in fact replying in the primary language of his home country and care was taken to minimise misunderstanding. He used the word 'normal' to describe his use and understanding of the primary language of his home country and thereafter interpretation of this language was used.
74. M was educated to degree level and obtained a Masters qualification. I am satisfied that she was well assisted by a careful and professional interpreter. She sometimes used sophisticated language and concepts. She took her time to consider and answer certain questions. She could be thoughtful, careful and deliberate in her answers. At times she became upset and tearful, requiring a few moments to compose herself, and at other times she appeared somewhat controlled and lacking in emotional affect. It did not appear that the latter was due to language or communication difficulties but was associated with the particular content or topic of evidence her answers were referring to. However, I have been careful to consider this aspect of her evidence in terms of its content and not of her demeanour.
75. M has provided two statements dated July and November 2022. She provides a comprehensive and detailed response to the LA's case, albeit I have seen information as to the difficulty of sourcing appropriate interpretation and legal representation. It became clear during the course of the hearing that she had not seen the ABE interview in full nor with the help of an interpreter. She had seen parts of it, interpreted by her solicitor who also speaks the primary language of M's home country. She therefore had to view it during her evidence before questions could be asked.
76. By contrast, F has undergone cognitive and intermediary assessments. Dr Heller carried out a cognitive assessment in December 2022. Communicourt carried out an intermediary assessment in January 2023.
77. Dr Heller noted:
 - F is functioning at a cognitive level that is well below the population average but not within the learning disability range.
 - She doubted he could have achieved GCSE equivalent examinations. I note that he left school at 16 and did not complete college.
 - His functioning on mental tasks fell within the Extremely Low range (99% of people would score higher) and he is very slow to process non-verbal mental tasks, and

she predicted that he would find aspects of the court process difficult to understand.

78. The Communicourt report noted:

- F had considerable communication difficulties in the following areas:
- Attention and concentration: F had difficulty attending tasks and required numerous formal and informal breaks.
- Auditory working memory: F had difficulty consistently processing sentences that exceeded 5 key words, which is below the average for a typical adult.
- Understanding court specific vocabulary: F was unable to reliably identify or explain court specific terms and roles.
- Understanding grammatically complex questions: F was unable to reliably respond to questions containing tags, multiple parts, low frequency language, statements, preamble, and negatives.
- Understanding of figurative language: F demonstrated difficulty in understanding figurative and non-literal phrases.
- Expression: F required ample time to formulate an answer before he responded.
- Literacy: F reported good reading skills in a South Asian language but was unable to take notes independently when spoken to in that language.

79. As a result, F was supported by an intermediary in court. Fortunately, the same person was available throughout this hearing and provided valuable guidance to F, the court and the advocates. The intermediary provided advice at the outset and during the course of the hearing as to the management of F's needs. Regular breaks were taken during the course of the other witnesses' evidence to enable his team and the intermediary to check on his participation, comprehension and instructions, with additional time built in to permit the interpreter and intermediary also to take short breaks and avoid fatigue. During his own evidence, shorter breaks were taken every half hour.

80. I am satisfied, bearing in mind the relevant guidance applicable to vulnerable parties, that F was able to participate and exercise his ECHR Article 6 rights to the best of his ability with the appropriate assistance that was available.

81. F has provided two statements. Given his difficulties, it is notable that they are written using sophisticated terms and vocabulary and do not read as if they are 'his' statements. I have been told that his second statement was prepared by his solicitor following three days of taking his detailed instructions with the assistance of an intermediary and interpreter. Although it was not first written out in the primary language of the parents' home country or the Father's spoken dialect of the same (as is properly required), they were nonetheless interpreted to him before he signed them and confirmed their truth. While it is perhaps harder to accomplish and more cumbersome, a statement in which he is assisted to set down his own thoughts and

responses in his own words has a more valuable impact for the court than a polished document of this sort.

82. His vulnerabilities were noticeable during his oral evidence. He occasionally misunderstood which topic or concept a question was addressing and needed further explanation or help to focus his answer on the relevant issue. His vocabulary and responses were not complex. He became very upset discussing certain topics and required a few minutes to compose himself from time to time.
83. Neither parent is identified as a potential perpetrator of abuse, but the LA asserts that they have shown minimisation and a failure to protect; concealment of the history relating to their oldest son A who is a convicted sex offender; discouraging Y and Z from revealing A's existence or talking about A; disbelieving Z, showing him a lack of support, accusing him of lying and attempting to undermine his account.
84. Their position is that they feel themselves to be in an impossible position and they have each expressed that they do not know where the truth lies in relation to Z's allegations and to await the outcome of the evidence and this hearing. They refute the LA's assertions as to their behaviour. They would both dearly love their children to be reunited in their care as soon as possible.
85. In brief, while I of course note that they are separately represented and I do not treat them as sharing identical positions, the cases made on their behalf have in particular raised the following key issues:
 - Problems with understanding, language and interpretation;
 - Lack of awareness of F's particular vulnerabilities until December 2022;
 - The impossible position they found and find themselves in given that the allegations are made by one of their children against another of their children;
 - The attitude expected of them by the first social worker CC in particular and the culture of automatic belief held by key professionals, placing the parents in an even more impossible position;
 - Important details of the social workers' oral evidence which emerged during the hearing that supported a fairer picture of the parents' behaviour;
 - The understandable feelings of shame and desire to avoid wider public knowledge relating to A's convictions;
 - Notwithstanding A's convictions, the difficult balance of still loving him, being there for him and being very worried for his welfare, particularly given that he lives apart from the family in V and not in London;
 - The wariness of members of immigrant communities with regard to involvement with 'the authorities' such as police and children's services, both in terms of their own cultural context being misunderstood but also in terms of how it might be perceived in their own community;
 - Notwithstanding that, their high level of co-operation with agencies, both in V where they used to live with A, and in London in relation to these recent incidents;

- Aside from the history relating to A, the absence of other risk factors and the presence of a range of positive factors;
- An over-pathologised interpretation of a few instances of Z's behaviour at school as 'sexualised' when it was within normal range for his age;
- The absence of any direct third party evidence or medical evidence of the alleged abuse, and the reliance on a variety of hearsay recordings of Z's allegations;
- Numerous serious concerns and defects in the ways in which Z's allegations were obtained and recorded;
- Numerous concerns and queries as to the meaning and interpretation of Z's words.
- The frequent examples of loving, warm and entirely appropriate and positive contacts between the parents and their children, and on the few occasions that have occurred also between Y and Z.

ADULT BROTHER A -

86. The three children I am concerned with have an older brother, A, born in 1999, who is 23 years old, and is a convicted paedophile.
87. In V at this time, the family lived in a three-bedroom house. It is said that A had his own bedroom, Y shared with Z, and U was born in 2017 and shared his parents' bedroom. In 2019-2020 Y would have been 9-10 years old and Z would have been 5-6 years old.
88. A accessed the indecent images using a laptop and his mobile phone. His phone is said to have been password locked by him, while it is not clear whether his laptop was also password locked (although I would consider it surprising if it was not given his phone was secured by password). On his arrest he was bailed to live away from the family home and to have no contact with his brothers, and it is claimed that he has done so ever since. There is no evidence to suggest otherwise.
89. I heard differing accounts from the parents as to arrangements in the family home prior to A's arrest. M insisted that A had largely confined himself to his room save for mealtimes and his activities outside the home, and that the younger boys did not access his room at any time. F gave accounts of the children biking around the home and in and out of A's bedroom due to the limits on their ability to spend time outdoors during the Covid lockdown period.
90. I also heard, despite the children's ages and the impact of the lockdown and the lack of other computer devices in the home, that they did not have any access to A's mobile phone or laptop.
91. As a result of A's criminal offending, V children's services became involved and placed the three children on the CPR as at risk of sexual harm, due to A's offences, and V Council worked with the family to review the younger children's safety. There were initial concerns that the parents were uncooperative and/or unhelpful and that A

might have been allowed into the family home. Unannounced visits to the family home were undertaken and no evidence of such visits was found.

92. Keep Safe work was done with Y and Z in mid-2020 during which good and bad touch work was undertaken with the allocated social worker. Y and Z were considered to already have a good understanding of good and bad touching and both children were reported to have spoken about how they had never experienced abusive touches and how they would tell their parents if anyone did anything bad to them.
93. The parents were then considered to be working well with the child protection professionals and the case was stepped down to Child In Need plans in November 2020. The parents signed up to a Safety Plan following a risk assessment exercise in mid-2021. The parents were assessed as able to safely and appropriately manage the risk and the Safety Plan dated August 2021 stipulated that they should always supervise any contact between A and his younger brothers. The case was then closed in autumn 2021 shortly before the family's move to London. V Council had been aware of the family's plans and M is recorded in the Case Closure Record as saying the family was moving for a 'fresh start', although in her oral evidence she denied saying/meaning that.
94. The parents assert that A has lived apart from the family since his arrest, firstly due to bail conditions and subsequently due to the Safety Plan put in place with the parents' co-operation with V Council. He was permitted to visit the family home in V for about five minutes in October 2021 just before the family left for London, with the knowledge and in the presence of the V social worker. Additionally, their move to London places a physical distance between A and the family home. There is no evidence to suggest that A has visited their home in London since their move in 2021. The parents have made occasional visits to V without the boys, the most recent by M in January 2022.
95. A is neither a party to nor an intervener in these proceedings. He has not been directly implicated by any allegation, albeit that the case pursued on Y's behalf at times verged on querying whether A could have been more closely involved in the boys' lives and thereby somehow implicated in Z's allegations. At the very least it has been suggested on behalf of Y that it has been an unsatisfactory aspect of the investigation that neither the police nor the local authority made any enquiry of A's whereabouts.
96. All parties either acknowledge or actively assert that A's history is part of the context and a potential risk factor. The speculated risks being that in the period prior to A's arrest that Y and/or Z saw images that A had in his possession, or may have been directly exposed to paedophilic behaviour involving A. And that this might explain or have contributed to this subsequent allegation and/or behaviour almost two years since his arrest and departure from the family home. There is no evidence of such exposure and both boys had the Keep Safe work after A's arrest and departure from their home, and where neither disclosed any exposure to indecent images or abusive behaviour.

97. The parents have asserted that since his arrest he has had minimal indirect contact with the boys. At most, M explained, she has called him on speakerphone some months before the precipitating incident here, to ask for him to help with Y's homework. Y himself has described an occasion of indirect telephone contact when he spoke with A in relation to his homework. Z has said that he has not seen A 'since he was a baby'. Clearly this cannot be correct given that Z was 6½ when A was arrested – it is likely to be indicative either of Z's poor communication issues, poor grasp of dates and times and/or a degree of confusion instilled by being asked by their M not to speak about A or about 'the incident' relating to A. This is M's term for A's arrest and conviction used repeatedly during her oral evidence.
98. Both Y and Z have stated that they have been told not to speak about A, and I have no doubt that this is the case. Y said this to the social worker on 8.4.22 during a statutory visit in foster care, albeit the foster care notes show that he had already discussed A with his foster carer by then on 15.3.22.
99. Y was reported by his teacher FF to have said the following on 14.3.22: *'He stated that he was the oldest sibling and when I challenged this and said that I was under the impression he had an older sibling, he said "That is irrelevant as he is not here."'*
100. Z was reported by the social worker CC to have said the following during a discussion at school on 17.3.22: *'Z reported that he has no big brother and lived 8 years in [V Council area]. When asked about who A was, Z replied "he is my brother, he is 22-year-old, mum said not to say that he was a big brother". Z said that he does not know where the big brother lives.'*
101. At the same meeting, U is reported to have reacted as follows: *'When asked about the name of his brother, U replied that he has boys brother [sic] (Y and Z). When asked about who A is U said "Nooooo" and put his hands on the head and the got up of the chair.'* [sic].
102. Z is also reported by his foster carer to have said on 28.6.22 that M was telling him *'not to tell his big brother name A to the social worker'* (sic). This allegedly followed an occasion when M had approached Z, U and their foster carer outside the school, began speaking in a South Asian language, took Z by the shoulder and continued speaking to him despite the foster carer's request that she should not. This account is contested by M and I have not heard evidence from the foster carer who witnessed and noted this. M asserts that she bumped into the group, and was responding to Z asking about A in a public place and encouraging him not to chat about it there and then.
103. On 6.8.22 Z told his previous Children's Guardian *'he is my secret brother, I do not want to tell about him'* and that his parents had told him not to mention A.
104. M accepted in her oral evidence that she had asked the boys not to speak about A's arrest/incident, but had not told them to deny his existence entirely. M asserts this was for understandable reasons based on wanting to avoid this information spreading

in her new community in London. She completely rejects the LA's assertion that she actively withheld information relating to A from the school or social worker.

105. Both parents were notably concerned about A's wellbeing and asserted his qualities on several occasions, and M emphasised how much the younger boys love A. Both parents gave mixed evidence in relation to their understanding of A's offences and risk, and that neither of them had observed this behaviour in A themselves. M spoke of her regular speakerphone chats with A, including very shortly after Z's allegations when she told me that A was bombarding her with questions.
106. It is helpful to note at this point that at the very least it is clear that the boys have not had a complete explanation of why A does not live with them. F said that they have been told he is away studying, and expressed with some despair and distress the impossibility he felt of attempting to explain A's situation to his younger sons. He said that despite the Safety Plan and related work with V children's services that the parents have not received advice on how to explain A's situation to the children. While this excruciating difficulty is on the one hand understandable, it does leave the boys believing an untruth, discouraged from discussing or naming A, and not knowing that A himself may pose a risk to them.
107. My analysis of these issues in relation to the LA's threshold findings schedule is discussed in more detail in the relevant section below.

Y -

108. Y is now 12 almost 13. At the time of the precipitating incident last March he was 11 almost 12. He was 9 almost 10 when A was arrested. He was born in Europe and moved to the UK at age 6. He speaks the same South Asian language as his parents at home and is fluent in English, but is likely to have been exposed to the language spoken in the European country in which he was born while there.
109. He is represented through his own Children's Guardian. He made a visit to court at the start of this hearing with her and a member of his legal team to meet me and see the court. It is always a pleasure to meet a young person involved in proceedings before me. I was glad to hear that some positive purpose was served for Y who told his Children's Guardian that he had felt 'really good' about his visit.
110. In V, he had previously been attending M Primary School with Z. He was also attending religious education at his local place of worship in V, and that continued at his local place of worship on moving to London until his move to foster care. Following the move to London and a new school Y was considered to have settled in well at his new secondary school.
111. At their new home in London Y continued to share a double bed with his brother Z. It was a modest-sized double bed at 140cm/c.4'6" width. The MGF was in another bedroom, the parents and U in another. The MGF has now returned to South Asia. Again, it has been raised on behalf of Y that it is an unsatisfactory element of the investigation that no thought was given at an early stage to enquire into the presence

in the home and knowledge of the MGF relating to the period leading up to Z's allegations being made.

112. Y has no significant physical needs, although both Y and Z suffer from itchy dry skin and eczema. One of the methods prescribed for them to help with this is the use of an emollient cream. A pot of Hydromol cream was found in the boys' bedroom during the police search. This had been mentioned by Z during his discussions and interview on 7.3.22.
113. On 7.3.22 Y attended school and then went to religious school at his place of worship afterwards. Following Z's allegations at school on the evening of 7.3.22, F was then asked to accompany two female plain clothes police officers to the place of worship just before 7.30pm. There was no interpreter present and F was not informed that they were going to arrest Y nor of the charge. F asked Y to come out of the place of worship, and he was then physically held by the officer, accused of an allegation of anal rape of Z and arrested just at the corner of his place of worship. He and F were both extremely upset.
114. I heard deeply unsatisfactory evidence from the arresting officer as to the details surrounding this arrest and its rationale. She herself was honest and straightforward as to the circumstances of the arrest. She was assigned to the arrest and was not the officer in charge who had decided that Y was to be immediately arrested. She belonged to the local Police Child Abuse team, and I can reasonably speculate that what occurred was that this team is more used to dealing with adult suspects and simply translated their approach without more careful thought to an 11 year old.
115. I heard extremely upsetting evidence from F as to the circumstances of Y's arrest and detention and the degree of distress and confusion he and Y were undoubtedly experiencing. F was not permitted to speak to nor comfort Y. Y remained very upset for the few minutes' drive back to the police station.
116. Y then had to sit in the police car in the yard for about 1.5 hours waiting to be formally taken into custody. There then followed a further grossly unsatisfactory management of his detention, his interview, and intimate sample process, all of which were undertaken overnight and into the next morning with Y being held in an adult cell and de facto treated as an adult and without proper regard to the requirements of Section 11 Children Act 1989, Code C/8 Police and Criminal Evidence Act 1984 and the case of **Re L (A Child) [2017] EWHC 3707**.
117. These processes involved multiple failings by the police and are set out in fuller detail in Appendix B. I am quite certain that both Y and his F would have been traumatised, distressed, scared and confused. I would be astonished if there was not an element of reliving some of the fears and anxieties that flowed from the arrest and removal from their home life of A.
118. Following a frightening, exhausting and humiliating night, Y saw a duty solicitor and gave a prepared statement saying 'I have never sexually assaulted my brother in the way described in the disclosure. The allegation is not true.' and gave a no comment interview. He faced questions that went beyond what had emerged from Z's ABE interview, including whether Z's anus would show cuts, stretching or bleeding.

119. Y was then released on bail with conditions that he should not attend the family home or have contact with Z. As a result, at around 7.30pm on 8.3.22 he was taken from the police station and placed in foster care under a Police Protection Order. He was not able to see his parents who had been waiting at the offices of children's services to be updated. I have seen a photograph taken at this time as his parents were so worried not to have seen him. He looked utterly miserable.
120. Y is currently in foster care without his siblings and has been since 8.3.22. An interim care order was first granted on 6.4.22. Unfortunately, his placement is not a cultural nor religious match. He attends a local secondary school in London which he joined in Year 7 in November 2021. Steps are being taken, albeit inexplicably delayed, to ensure that he receives religious education.
121. He returned to school on 14.3.22, and has continued positively at school, albeit extremely unsettled and 'distracted' after his arrest. He was supported by the Learning Support Unit for his emotional needs and while a risk assessment was undertaken.
122. On 14.3.22 he had a conversation at school with his teacher FF who noted:
"He was a bundle of emotions but did make some comments relating to the situation.
- *"I am so unhappy."*
 - *"I did not do what my brother said I did."*
 - *"Will I ever see my parents again?"*
 - *"What will happen to me?"*
123. On 30.3.22 F had contact with Y. F was reminded to speak in English as an interpreter was not present; despite repeated reminders and requests F was observed to continue to lean in and whisper to Y in a South Asian language; Y was noted to be emotional, tearful and appear a little embarrassed, usually after F had whispered something to him in that language.
124. On 8.4.22 the social worker CC carried out a statutory visit to Y at his foster home during which she addressed a number of important issues with him including the substantive allegations. Unsatisfactorily, the case recording note does not clearly set out the questions posed by CC and exact answers given, nor does it reveal that it took place outdoors in a small park area near his foster home and that he was extremely upset at times. This meeting included:
- Y admitted to having an older brother A and that he knew the police had come to their home because of A.
 - Y explained he had previously been asked about being touched by A but said no one had believed him that he had not, and that he thought CC would think the same.
 - Y said his parents had told him not to admit to having an older brother and he apologised for not telling the truth.
 - Y was reported to have said: *"I don't feel happy, I feel disappointed. I know why we are in care police told me what my brother said..."*
 - Y denied he had hurt Z and 'he said he thought his brother said he had hurt him because he had learnt this on YouTube. Y then typed

words on YouTube gave the impression that he wanted me to believe that Z watched videos about sex on the YouTube and then made the allegation against him.'

- Y told CC that 'if he put wrong spellings in YouTube it would show him sex and then I asked him to do this, but nothing came up. He then put the word sex in and said "I hate this word" and he started to cry.'
- Y said he did not know 'when the behaviour started, but when I asked him what behaviour he was taking about he kept quiet and then said "I am confused you are asking me things I don't know".'
(CC added in her oral evidence that she was unclear whether the 'behaviour' referred to accessing videos on YouTube and she did not pursue further questions because Y was so distressed during this visit.)
- Y reported he was learning about sex and puberty at school.

125. In foster care Y is noted to have behaved entirely appropriately and poses no concerns or difficulties to his foster carers. There is a similar picture at school where he says he has some good friends. He has had very limited contact with his siblings. I have seen a lovely picture of all three boys smiling together dressed in their clothes for a religious festival in May 2022. Observations have been of consistently warm and loving relationships between the boys and between them and their parents. On 7.4.22 at a chance meeting Y was noted to be upset and tearful and was comforted by Z who appeared embarrassed and reassured Y. M has described Y as very sensitive, emotional, polite and helpful with no concerns at school and liking to be praised.

126. Consideration was given pursuant to the process outlined in **Re W [2010] UKSC 12, Re G and E (Children, Vulnerable witnesses) [2011] EWHC 4063 (Fam)**, and **The FCJ Guidance Dec 2011** in relation to children giving evidence in family proceedings, as to whether Y should give evidence and if so by what means.

127. A Speech and Language Therapy assessment was undertaken in October 2022 and noted the following:

- 'Extremely low range' for receptive language, indicating 'limited vocabulary knowledge'.
- 'Significant difficulties' in understanding and recalling spoken directions.
- Within the expressive language category, 'significant difficulties' in formulating sentences and 'moderate difficulties' in recalling verbal information.

128. A Triangle Intermediary assessment was approved by the court and the assessor noted the following:

- 'Y demonstrated some limitations with both his receptive and expressive communication.'
- Y finds it extremely challenging to indicate when he does not understand something and will often attempt to guess and work out meaning.'
- 'Y has a limited auditory working memory.'

- 'Y can provide a basic account of an event he has experienced; however, this is not always coherent, and he can 'jump around' in time.'
 - 'When questioned in a suggestive way with the use of tagged questions, Y will readily acquiesce.'
129. Y was clear that he was unwilling to give evidence. He is vulnerable by virtue of his age. His Children's Guardian considered that it would be unlikely, in the context of his denials, that a process of oral evidence and cross-examination would yield helpful further information. She also considered, in the light of the Triangle assessment's conclusions, that his evidence would be likely to be heavily influenced by his desire to please and ready acquiescence to suggestion. Finally, she also concluded that it would be damaging to Y's emotional welfare and sibling relationship with Z. He described being significantly scared at aspects of the court process, and his Children's Guardian felt that the process of giving evidence would recall the clearly frightening experiences he had on being arrested. Following upon that assessment process, no party then sought that he should give evidence or be subject to cross-examination.
130. It is pointed out on Y's behalf that, unlike an adult party, this has meant that Y has not been able to give evidence nor instruct directly nor play any direct significant role in the court process. He has not read the papers. His instructions have been taken in a sensitive child-centred way. Other than his visit to meet me and see the court room he has not attended court for any hearing. He has not been able to respond to evidence and points made at court. He has not had the opportunity to impress the court or to refute the LA's allegations during oral evidence, nor for Z's allegations to be clarified or challenged by examination on his behalf.
131. It is therefore firmly asserted on Y's behalf that the court must be particularly vigilant in ensuring that Y's rights to a fair trial safeguarded by Article 6 ECHR are actively considered given the necessary interplay with his rights to respect for his private and family life under Article 8 ECHR which are here so heavily engaged. He is the party against whom the LA seeks findings of sexually abusive behaviour against his own brother.
132. In closing submissions on his behalf the following was proposed: "What, then, is the proper approach to these difficulties? Again, it must be a most careful adherence to rules of evidence; application of due weight to unchallenged evidence and the greatest care taken before assuming that any submission adverse to Y's case is incapable of a satisfactory answer or is capable [of] accruing to it any significant weight." No party suggested a different approach, and it is of course correct to proceed with great care and rigour in such circumstances where all the evidence from the two children at the heart of these allegations is entirely hearsay.
133. Y's position in response to the substance of the LA's case is that he denies all Z's allegations. On being arrested, his F's evidence was that Y was sobbing and calling out 'No, no, no!'. He gave a prepared statement denial to the police following discussion with a solicitor at the police station on 8.3.22. On 14.3.22, in conversation with his teacher, he denied having done what Z had said. He also denied hurting Z to the social worker on 8.4.22. When interviewed by DD for her assessment on 7.7.22 she wrote as

follows: '[I] Then explored a little further concerning the allegation against him, asking Y to share his views about his brother's disclosure, Y responded "*nothing happened, I did not do anything to Z*". When discussing his formal response to the Schedule of Findings with his Children's Guardian he stated, '*Why would Z say those things?*'. The LA notes the absence of righteous indignation or sense of injustice or unfairness.

134. The case on behalf of Y focusses on the following:

- Y's consistent denials and that he has to prove nothing and the LA has to prove its case to the necessary standard;
- The absence of any corroborative negative factors shown by Y such as sexualised behaviour, interest in pornography, misbehaviour or lying (although I note that he apologised on 8.4.22 to the social worker for not telling the truth that he had an older brother because he said he had been told not to by his parents);
- Gaps in the evidence: no investigation of A, of MGF, of the attendees at a party or gathering of family friends on Sunday 6.3.22 the day before the allegations were made; no opportunity to hear from the original investigating interviewing officer DC B who conducted Z's ABE interview as he has left the Metropolitan Police.
- The inappropriate approach, culture of belief and lack of training at the LA which affected the work done by the social worker CC. This led to a limited approach which did not adequately address key issues such as the gaps in the evidence above, but also meant that CC did not explore what the children may have been exposed to in V while living with their brother A and during lockdown, but also what work V Council did with them and the parents subsequently. It also meant that her direct discussion with Y on 8.4.22 was poorly handled and her noting and understanding of Y's responses was unclear.
- The reliance of the LA's case entirely on untested hearsay evidence;
- The application of the principles set out in the case of **P [2019]** and the January 2022 updated **Achieving Best Evidence in Criminal Proceedings Guidance**;
- The application of forensic rigour to that evidence in examining: what Z said, how he came to say it and the reliability of the investigation process, what he might have meant, what others might have interpreted Z to mean, and Z's vulnerabilities;
- Additional submissions equated Z's use of gestures and movements with demeanour, and urged the court to reject applying weight to matters of such demeanour given the substantive problems associated with his interviews and the usual problems of inferring truth from demeanour;
- Leading the court to a conclusion that it cannot safely confirm that there is any reliable evidence against Y as alleged in the LA's schedule;
- Factors demonstrating inherent improbability, balanced against the more likely explanation that these two boys shared a double bed, and occasionally squabbled, fought or mucked about.

Z -

135. Z is now almost 9½. In March 2022 he was 8½. He was 6½ when his oldest brother A was arrested. He was born in Europe, into a household where the first and spoken

language is a South Asian language. He left Europe when he was 3 years old, and may have been exposed to the spoken language while there. He has subsequently learnt English since moving here in 2016.

136. He and U are represented through their own Children's Guardian. He is currently in foster care with U.
137. In V, he attended M Primary School with Y. Although the school's accounts of him within the child protection process that followed A's arrest and conviction were that he and Y were 'lovely' and there were no issues, in fact Z was causing a number of concerns that were noted in their CPOMS recordings: in April 2019 a SALT referral is made and Z noted to find peer interaction difficult, becoming too excited and physical; in late 2020 and early 2021 there are several notes of Z being threatening, unkind, spitting, touching including fighting, pinching, punching and kicking, swearing including at a teacher attempting to reprimand him. In all but one case, Z appears to readily admit his wrongdoing, and he is said in his end of year report to need reminding about making good choices and that he knows to speak to a trusted adult when he needs help.
138. I note that not only were these concerns not shared with V children's services at the core group or child protection meetings, they do not appear to have been shared with the parents according to the records provided by the school, and are not referred to at all in the year-end school reports save in the most oblique terms. In those circumstances, I am persuaded by the M's evidence that the parents had no idea that Z was presenting with the difficulties observed by the staff at M Primary School.
139. On moving to London, Z began school at J Primary School with his younger brother U in November 2021. The school expected information to be sent from M Primary School and requested it. A limited amount of information was provided including a SALT assessment report of February 2020 and May 2021.
140. The SALT 2021 assessment took place when Z was about 7½ and some 10 months prior to the allegations made in March 2022. It was noted that:
 - overall Z's scores were 3s and 4s where 10 would be an average score for his age;
 - Z was quickly distracted and hard to refocus and settle;
 - regarding Sentence Comprehension - 'he may appear to have understood... even though he has not fully understood or paid attention', and 'It is likely to be difficult for him to fully understand information or instructions when additional visual clues are not available';
 - regarding Inferential Comprehension - it was noted that he found it hard to recall detail or make inferences/reasons, which was thought to relate to his attention skills and his understanding of language;
 - regarding Naming - Z often gave a related but inaccurate word (e.g. dolphin for whale), or got the sounds of a word wrong, or appeared to recognise an object but be unable to name it.
 - The conclusions drew attention to Z's particular difficulties with word-finding, following and understanding longer or more complex

sentences, the impact on his performance due to difficulty maintaining concentration, his use of distraction such as talking about slightly related information without fully answering the question which may give the impression of greater understanding than he actually had, and that his friendly nature and ability to follow along would make it harder to notice these difficulties.

141. J Primary School was not informed by the parents or M Primary School of the history of the past two years: neither the challenging behaviour nor A's arrest and conviction nor previous child protection involvement by V children's services. This only came to light after Z made his allegations in March 2022 and the police and children's services in London became involved. They were not sent M Primary School's CPOMS records which set out the difficulties Z had been posing. M told me she had assumed that the school records would have been shared and that therefore there was no attempt to hide information from J Primary School relating to A as she thought school and social work records would have been available.
142. They observed within only a short period that Z was showing significantly unsettled and unfocused behaviour in the classroom, aggressive behaviour in the playground, high sensitivity and over-reaction to being touched or shouted at by other children. He was intensively supported and monitored by his TA, EE, with whom he developed a very close and somewhat dependent relationship.
143. At first it was supposed this might be due to being unsettled by the move and change of school, but by January 2022 staff consider that Z might have undiagnosed special needs.
144. Key incidents between November 2021 and March 2022 were as follows:
 - in December 2021 he is noted to be unsettled and aggressive in the playground, including pushing, punching, hitting and holding by the neck, and was noted to choose to play with two older girls instead of his own age;
 - M was advised not to threaten to return him to V if he was misbehaving;
 - in January 2022 Z was seen holding another child tight around the shoulders and with his face close to hers but he denied trying to kiss her, and Z looked under a table at a girl who was putting her tights on, and behaved as if it was a joke when spoken to;
 - in February 2022 he looked over a toilet cubicle door as another child was undressing to use the toilet, and was noted to grab children or look at them when they need privacy;
 - on 28.2.22 a meeting was held with Z's teacher, GG and M. M responded appropriately when these issues were shared and explained to staff that he can be impulsive and grab visitors at home. M was then noted to speak to Z appropriately in the teachers' presence about boundaries and his behaviour.
 - The school made a referral for counselling for Z, although given subsequent events that did not proceed.

145. I note at this point that J Primary School staff were describing some of Z's behaviour noted above as 'sexualised'. Having been directed to the Brook Sexual Behaviours Traffic Light Tool for ages 5-9, which sets out in three columns different types of behaviour and whether they fall within or without safe and healthy behaviour, the social worker AA conceded that Z's behaviours had not fallen within either the 'amber' or 'red' columns and that it was not correct to classify this behaviour as sexualised. I am entirely satisfied that the school's description and subsequently the LA's adoption of this label was wrong. Z's behaviour appears to fall well within the examples of natural curiosity described in the 'green' column of the Brook Tool.
146. On the morning of Friday 4.3.22 Z was extremely angry and physical with another child during playtime, and shouted at EE. He was noted to be finding it very hard to control himself. It was decided he would put on 'time out' from playing a favourite game Kingball for a week and EE told him later that day. During a conversation with EE towards the end of the school day Z told her about the scratch on his neck.
147. Due to the content of that note and safeguarding staff concerns, on Monday 7.3.22 Z was asked to leave his classroom after registration and taken to II's office but II was called away, so he was then spoken to by GG at around 9.30am and was returned to his class. He knew neither of these members of staff very well, but would have been seeing them around the school. GG noted her discussion with him after she had spoken with the head teacher HH about it and HH made a referral call to the LA with GG sitting with her in her office. Z and U were then kept late after school in accordance with the advice from the LA, but did not see their parents until after Z was spoken with by the police at school in the early evening. While waiting for the police to arrive Z spent time with members of staff and U, but I am satisfied that there was no discussion of his comments made to EE or GG until the two police officers arrived at the school at about 5/5.30pm. The social worker CC had arrived a little while earlier but had no discussion of the allegations with Z. He was then spoken to in GG's office in the presence of CC and the two officers, none of whom he had met before other than GG who also sat in. Following that discussion Z was transported later that evening to the police station in the police car but without another adult. CC transported M and U. He was then interviewed by DC B between 21.28 and 22.25 that night, before returning home. There was no evidence noted in the police material of any pre-planning or rapport building.
148. On 8.3.22 he did not attend school but was taken to the H Centre for a medical examination. Intimate samples were taken and his body examined for marks. The medical report notes that he declined to permit his genitals to be examined. No marks, injuries or dilatation was seen at his anus. A vertical hyperpigmented 2cm x 1cm scar was seen on his right neck and upper chest. Areas of 'patchy itchy dry skin' were also noted on the backs of his arms as '?mild to moderate eczema'. A note also appears that is said to relate to the mark on his neck "Mother says from feeling itchy. Z says so also." I note that this mark is not described as showing patchy dry eczema presentation. A further note reads: "He is always scratching himself." I am unaware of any information that suggests an interpreter was present at this examination.

149. Since 7.3.22, Z has neither repeated nor retracted his allegations. M's evidence is that both parents, Z and U were extremely upset when they were all at home together on 8.3.22 but it was clear that Y was not coming home. She described Z rushing upstairs, crying, and saying "*I made a mistake*". Because she had been told by the police not to talk to Z about the issues, she felt she could not speak to him about this and she told me she does not know what Z meant by this comment.
150. Once Z was back at school he showed some very challenging and upset behaviour. When challenged about bad behaviour to his peers on 10.3.22 and whether he wanted to be kind to his friends, he is reported to have replied "No because they took me to the police station and told me bad things." On 11.3.22 he told EE that he was sad and missing his brother, and said that the police were evil and had taken Y from the place of worship. He also referred to his M having a 'disagreement' with his older brother which EE took to mean a fight. (EE was not clear in her CPOMS note about which older brother was being referred to, but this appears to fit with M's account of the recent phone conversation with A in which he was challenging her with many questions.)
151. Z remained at home with U and his parents until Interim Care Orders were made on 6.4.22, when he moved to a foster placement with U.
152. As mentioned above, contact has shown relationships with his parents and brothers appears to be excellent, with plenty of warmth and affection seen. He is noted on many occasions such as 7, 8 and 29.4.22, 6 and 9.5.22 when speaking with the social workers and several further dates through the year particularly at contact sessions to have requested contact with Y, and to have been saddened and tearful when told that it was not possible. On a contact visit in early May M was repeatedly requested not to whisper with Z in their South Asian language.
153. In June 2022 a concern was raised following Z claiming to EE that he knew how to 'look for private parts' on the internet. GG queried this with him and he said that he had not actually seen any on computers or phones. His school issued tablet was checked that it was secure and it showed no sign of having been used for this purpose.
154. Since being in foster care, Z has largely settled well and appears to be more settled at school. He has not posed management difficulties to his foster carers and generally interacts well with U. There have been a very few occasions involving reprimands for inappropriate behaviour. Z has touched the foster carer's cat's anus but could not explain why. On one occasion Z and U were bumping their behinds together and stopped when requested. On another occasion Z told U off for being 'disgusting' when U was pulling his trousers down to show his underpants. There is no evidence that this was more than high spirits. The LA has included in its submissions that this is evidence of 'perceived sexualised behaviour' between the siblings. Looking at the Brook Traffic Light Tool for Sexual Behaviours, I fail to see how these could be described as 'sexualised'. There has been very little conflict between them save for the occasional normal sibling friction and U occasionally hitting out.
155. M has described Z in her second statement. She notes the problems at school. She describes him as sensitive, considerate and caring, liking hugs and cuddles. She gives examples of Z sometimes exaggerating or talking nonsense. One example was saying U was vomiting when he was not. Another incident she refers to is what has become

known as the Hydromol incident, which is discussed in more detail later. M refers to it as an example of Z putting the blame onto one of his siblings, however it strikes me that both boys were annoyed with each other.

156. As with Y, consideration was given as to whether Z should give oral evidence and be cross-examined. An intermediary assessment was commissioned and his Children's Guardian provided a Re W assessment report.

157. The Triangle intermediary assessment of December 2022 took place 9 months after Z's allegations when he was just over 9 years old. Triangle is resource of known expertise in assessing and supporting young people in court settings. The intermediary author of the report has a background in psychology and has been working for and trained by Triangle since 2015, rising to manager and working as an intermediary, forensic interviewer and trainer. The report provided a number of relevant and concerning observations:

- Z was only able to attend and concentrate for a short time.
- He had difficulties with both receptive and expressive communication (understanding and conveying information), and appeared to have difficulty hearing at times.
- The same problems were noted in his presentation during the ABE interview.
- 'Although Z could provide a basic account of an event he has experienced and respond to questions about events, it may be challenging to obtain a full and accurate picture of what he is trying to say.'
- 'Z was able to provide a short narrative which contained little salient details and the detail he provided was not clear and could easily be misinterpreted. His speech was also unclear and I needed to ask him regularly to repeat things; alongside this he also had difficulty expressing himself effectively. He did not consistently refute incorrect information but he did not acquiesce to suggestive questioning. He was able to respond appropriately to simply phrased ... questions, forced choice questions and simple tagged questions. At one point I consistently gave him the same incorrect information and he then adopted this but appeared unaware that he had done so and was confused when I questioned it.'
- 'Z was able to say if he did not understand. He knew weekdays, months and seasons but had difficulty with time and distance concepts. Z was able to sequence simple information and had a good knowledge of positional language but expressed this in an unconventional way.'
- 'Z did not formulate sentences fully and repeated words or phrases multiple times while trying to say what he wanted to say. Z also did not appear to concentrate on what he was saying and so made errors such as telling me had been in his placement for "eight years"

when he clearly meant months. He also told me he played the guitar and was then confused when I asked him about this as he only plays the piano.'

- The results of the Triangle assessment led to a recommendation that *'it may be difficult for Z to give reliable evidence due to his difficulties with both receptive and expressive communication'*.

158. It was also recommended that Z should have the opportunity to watch his ABE police interview before giving evidence. All of these observations had obvious implications as to the value of any further examination and question and answer process.

159. The Children's Guardian's Re W report of January 2023 recommended that Z should not give evidence. Z was clear that he did not want to give evidence. At most he said he was prepared to speak to the judge by Zoom about his wishes and feelings. He is vulnerable by virtue of his age. The Children's Guardian considered that re-watching his ABE video interview and being questioned would be likely to cause emotional harm and be traumatic for Z. The recommended viewing of the video interview would limit the forensic advantage of cross-examination. There was an additional risk of Z having to be questioned again within any criminal proceedings. As with Y, following upon that assessment process, no party then sought that Z should give evidence or be subject to cross-examination.

160. The case pursued by Z and U's Children's Guardian has been largely similar to that pursued by the LA, along the following lines:

- Z has been consistent in his accounts, in outline, in detail, in repetition, and in answer to any question at any time by any person;
- There were no forensically significant inconsistencies in Z's accounts;
- His demeanour during the ABE interview was congruent and compelling (albeit I am not entirely clear as to the scope of what is meant by 'demeanour' in this context);
- The evidence of GG and CC as to their strong impression of Z's account, and CC's evidence of Z's gestures and demonstrations;
- Any breaches of ABE guidance are insufficient to undermine Z's account;
- No retraction by Z despite exposure to his parents' upset, being called a liar by his parents, his own affection for Y and desire to see him;
- Z's wish to spend time with Y points away from any suggestion that he was trying to get Y into trouble, motivated by jealousy or anger, for example in relation to Y not allowing Z to use the computer;
- 'Z's reports of being kicked in the bed, being slapped, pinched and scratched, and Y putting cream on the penis and then on Z's face; alone, could be 'horseplay' from an older brother to a younger sibling. The vivid description and demonstrations however, provided by Z during his ABE interview make it clear that he is describing inappropriate sexual behaviour. An event Z describes as

“squishy and hurty” and which made him feel “disgusting” and “dizzy”.’

- A finding of anal rape is not supported. ‘Z did not make an explicit allegation that Y anally penetrated him, whether digitally or using his penis. This appears to be a misinterpretation of Z’s description of what Y did.
- ‘...on balance it is *likely* that there has been some sexually inappropriate behaviour by Y towards Z. Specifically, that it is more likely than not that Y has engaged in sexual touching of Z.
- Calling Z a liar caused or risked causing him emotional harm. At the very least he was aware of the degree of upset felt by his parents.
- The parents approach to A, his offending and risk lacked insight or acceptance. It also developed a culture of secrecy and non-cooperation. The children were therefore at risk of sexual, psychological and emotional harm.

U -

161. U is almost 6 years old and was almost 5 when Z made his allegations a year ago. He was just 3 years old when A was arrested. He was born in this country. He speaks the South Asian language of his parents at home and English in the community. He is currently subject to an Interim Care Order and lives with Z in foster care and attends J Primary School.
162. U has shown some significant upset at school. On 9.3.22 he was very quiet and hardly ate. He sat facing the wall in class. He said that Y had died. He wanted to spend time with Z and regular time to do so was arranged. On 15.3.22 he was noted to be distressed and reporting ‘My mummy keeps crying. She wants Y back.’ In July 2022 he is noted in his education review to be struggling to regulate his emotions and presenting as a very angry little boy who was hurting children quite frequently, just walking past and hitting them. Z is noted to be very worried about U’s anger at school.
163. U has shown a few mild behavioural issues in foster care that I have mentioned already. He has shown some sexualised behaviour with his foster carer and her friend, placing his hands on their breasts. When challenged he is reported to say sorry but to know what he is doing and that he makes it look like an accident.
164. As with his brothers he has otherwise settled in foster care and has positive and affectionate relationships with his parents and brothers.

ANALYSIS OF Z’S ACCOUNTS

DISCUSSION 4.3.22 PM & TEACHING ASSISTANT EE

165. EE is a young TA. English is not her first language. She has had no specific training in ABE guidance and detailed record keeping relating to allegations of abuse. She had the school-wide safeguarding training. Although less experienced than the other teaching professionals, I found her to be doing her very best to be helpful, co-operative,

straightforward, fair, and forthcoming, and that she made careful efforts to recollect but accepted occasions when she could not.

166. She described making typed entries on the school safeguarding recording system CPOMS shortly after each occasion when it was required. She expanded on her original entry on CPOMS of 4.3.22 (paragraph 27 above) with three further statements dated July and October 2022 and January 2023. It became clear that her subsequent recollections in those statements were from her memory and not from any contemporary notes. I note here that none of the teachers who have done their best to provide helpful evidence in these proceedings had any legal advice or assistance in how to draft a statement or what it might need to cover and why.
167. She was assigned to be Z's TA soon after he started at J Primary School in November 2021 and noted particular difficulties with his behaviour and management as I have set out already. She appears to have spent most of each day in close contact with him.
168. It was clear to me from her evidence that she formed a close, supportive rapport with Z and was highly observant of him. The only flaw in her observations was that she was unaware of any expressive or language difficulties he may have had. She had not seen the SALT report from M Primary School and considered that he spoke English confidently. I note that English is not her first language either which may have contributed to this perception, and as noted previously that his friendly nature and use of distraction may have further contributed to the impression of greater understanding and concealed his level of difficulty. However, when asked about the passage in the ABE interview where the police officer attempts to explore truth and lies by the use of an example, EE considered that Z would have struggled to understand as it was too long and complex.
169. Her evidence supported the specialist assessments of his high levels of distractibility. He was also unusually disruptive and physical in the playground with other children, to the point that he could not be left unsupervised or he would have been fighting every day, and she remained close to him throughout so that she could intervene or calm him down. The information available from M Primary School CPOMS was not passed on as it should have been until after the precipitating events in March 2022, but meant that the staff at J Primary School were unaware of his history of disruptive and challenging behaviour.
170. She described Z's behaviour with a convincing level of detail and depth of knowledge, and I feel confident in being able to rely on her recall. She confirmed that he was not a child who had ever lied about others to get them into trouble, but that the opposite tended to be the case. She could recall only a minor occasion where he appeared to have said something possibly exaggerated. He would readily admit to, for example, hitting another child. She agreed that in her experience he would guess at an answer to please others.
171. It is clear that Z was extremely fond of and dependent on EE, to an extent that caused some concern. Her evidence is that he would follow her about, become frustrated if her attention was on another child, and for example he had asked her what underwear she wore and had tried to call her 'Habibi' which is a South Asian

language term of endearment. She had to enforce boundaries and provide him with appropriate guidance.

172. It is noted on Y's behalf that it is surprising, given how close and dependent on EE that Z was and how he felt able to share many of his feelings, that he did not tell her that he was experiencing sexual abuse, albeit I note that the key discussion with her on Friday 4.3.22 might be argued to have taken place before a sexual assault which may have taken place over the weekend. However, I note that Z has not shared any further details of any sort relating to his allegations with anyone since 7.3.22.
173. Z told EE about an older brother, but did not use the name A once throughout the year. He described this brother as being the same age as EE and that he was very good with computers and lived in V. It is reasonable from this description to conclude that Z was referencing A in these conversations even though he did not name him. She did not recall ever being made aware of Y until after Z's allegations were made and when Z was very upset on his return to school.
174. She recalled that she did not use the words slap, kick or punch in her discussions with Z. She recalled that he used the words 'private parts' when he referred in June 2022 to knowing how to look for private parts on the internet/apps.
175. Turning in more detail to the recording she made on 4.3.22, the following points emerged:
 - a) Her CPOMS note was made about 45 minutes after the conversation with Z at the end of his school day. It is styled as a brief summary and does not attempt to set out exact questions and answers.
 - b) Z had been particularly disruptive during lunchtime play and hurt another child with a ball and was told to sit out, but was shouting back to EE. He took himself off to the school office to report a scratch. EE's evidence was that this was not caused during the playtime fight because she intervened and there was no physical retaliation contact from the other children.
 - c) Later that day he showed EE the note from the office which reported the scratch was said by Z to be 'accidental'. When asked about why the office may have noted it was an accident given Z's description of an intentional scratch, EE suggested it may have been assumed or he may not have trusted that person with the details. In any event I note this is an inconsistency. I also note that he was behaving in an angry and oppositional manner immediately before visiting the school office, and in light of the communication difficulties that Z has been noted to have it may be that a misunderstanding occurred.
 - d) She describes him as laughing and smiling with her during reading time on the carpet when he showed her the scratch on his neck and the note, but said that his brother had done it. When EE asked why U (who also attended J Primary School) had done it, Z said it was his older brother who had done it intentionally to stop him shouting/crying when he had pushed his brother away because it was too hot.
 - e) Because of EE's lack of awareness of Y she presumed it was a reference to A/the 20 or so year old brother Z had mentioned to her, and therefore noted it in CPOMS as 'his 20 or so year old brother'. EE did not pursue any clarification of whom Z was referring to at the time. This explains her references in her note and first

statements to a 20 or so year old brother until her recent statement clarified her state of knowledge and therefore her presumption that it was A.

- f) Significantly, EE used the words 'pinched/scratched'. When asked to give more detail she demonstrated the movement that Z had shown her when describing the incident. She said he drew his hand in a downward movement down the side of his neck. His words had not been clear to her and she felt he did not have the vocabulary for it. It is telling that he appears to have used the word 'pinch' when describing a scratch.
- g) She thought it was a casual unimportant conversation and could not recall all the exact words that she used. She recalled mentioning that he should tell an adult when this is happening and he replied that his mum shouted at his brother and sent him to read the holy book, but she added that it was unclear if this was a general statement or related to that incident he had been describing.

176. In the circumstances, considering this note overall, I am confident that EE's recall of the circumstances and details, Z's gesture down the neck and his attempt to describe some sort of scratch by that means are sound, notwithstanding that he may have used the word 'pinch'. I take into account EE's familiarity with Z and her confidence in reporting and describing his account to her.

177. I consider that the association between the scratch and some incident in a shared bed arising from Z pushing away too close physical contact and feeling hot is also reliably recorded and is likely to be what Z said and what he meant.

178. Her initial presumption that Z was referring to A is accepted to be likely to be a mistaken presumption, and because of that she did not clarify to whom he was referring beyond that he did not mean U. I note that the children are reluctant to mention A to others, but that Z had mentioned A (except for his name) to EE. There is a risk therefore that he would not have named A in any event, even to EE, if A was directly involved. However, Z shares a bed with Y and there is no evidence that A has been visiting or sleeping over with his brothers since his arrest, let alone any evidence of his sharing a bed. I consider that it is therefore more likely than not that Z was meaning his older brother Y when speaking to EE on this occasion.

179. It is clear, given that EE could not be certain whether Z's replies about his M shouting at his brother related to this incident or was a more general statement, that this particular element of Z's account cannot be safely relied on to suggest certainty as to her reaction to that specific incident, but it can be relied upon to indicate that Z meant that his M has on an occasion reacted to Y's behaviour towards Z.

180. As discussed, I consider it is possible to understand what Z said and meant, and I am satisfied that this recording of his account on 4.3.22 can be treated as a reliable element of hearsay evidence to be considered in the overall picture.

DISCUSSION 7.3.22 AM & DEPUTY HEAD TEACHER GG

181. The account to GG on the morning of 7.3.22 is important. It is set out at paragraph 27 above.

182. It is the first occasion when Z is recorded to refer to private parts. It is a recording of his account that will not have been affected by the inaccurate summary set out in the MASH Note that was read by the professionals subsequently involved.
183. GG is a highly experienced teacher, and has now retired. Like her more junior colleague, she did her utmost to be helpful. She was clearly highly conscientious in her approach, and attempted to answer with fairness and care. She was a Safeguarding Lead Teacher and had undergone specialist training, but had not received ABE guidance training nor in relation to the interviewing of children nor recording of information relating to allegations of abuse. The term 'disclosure' was automatically used by the school staff. The Head Teacher HH confirmed it was a commonly used term, appeared in their policy and that they had heard nothing in their training to discourage its use.
184. Her role arose as a result of another of her Safeguarding Lead colleagues II reading EE's note on CPOMS over the weekend and feeling sufficiently concerned that she was 'professionally curious' and that it warranted a discussion with Z. II took Z from his classroom but she was confident that Z would not have felt that he was 'in trouble' because that is not how they run the school. It was accepted that he did not know II or GG well but would have seen them around the school.
185. II did not discuss anything with Z before she was called away to another task, so she discussed her concerns with GG who then spoke with Z. At that point the key concern must have been in relation to the mistaken presumption set out in EE's note that Z had been intentionally scratched by his 20-or-so year old brother when trying to push him away in bed. II said she had inappropriate sexual matters in mind, and that until she spoke to GG those concerns had not occurred to GG until II had pointed them out to her. That conversation was immediately prior to GG's discussion with Z. Although GG said she had kept an open mind, that must have been high in her awareness.
186. An additional concern appeared to be an alleged 'punishment' of being sent to read the holy book. GG described that as a 'very serious punishment' which she had not heard of before. Given that this primary school is in a London borough with a high proportion of families of a particular faith, this suggests an important cultural misunderstanding. Requiring a child to read the holy book can be seen as having many potentially positive implications, including the sharing of helpful moral guidance.
187. It was clear that she had been profoundly shaken by this experience both on the day in question and in the witness box. She had no experience of allegations that might be considered intra-sibling abuse. She described herself as feeling stressed and upset during that day. Her Head Teacher HH described the provision of pastoral managerial support to GG over the following months as the most challenging such task of her career. HH described GG stating '*she needed to talk to me urgently... it was very clear from her face she meant she wanted to talk now...in her body language she had heard something she needed to disclose. She didn't cry until the end.*' So GG was upset enough to cry at the end of her first description to HH of her discussion with Z that morning. HH then made the call to MASH at around 12.25pm and told me that she spoke to MASH and checked with GG for verification as she proceeded because 'I judged her still be to be upset'. GG confirmed that HH had made the call as she was

too upset to do so on her own, but then said it was she, GG, who had spoken to MASH via speakerphone. I note that GG's own CPOMS note refers to 'HH phoned MASH' which supports HH's recollection. Given that HH was not upset and GG was, I prefer HH's recollection. It was straight after this call that GG created her note on CPOMS.

188. No notes were taken of this MASH referral telephone conversation by either HH or GG. As I have discussed earlier in this judgment, GG's CPOMS note did not include the words 'bend over', 'back passage' nor any connection between the use of cream and any penetrative act as set out in the MASH Note of the telephone referral. I query whether this mode of managing the telephone conversation added to the misreporting of the referral in the MASH Note by way of some series of miscommunications alongside the inappropriate summarising exercise that I have already discussed, but it is impossible to know with any certainty.
189. GG's evidence comprises the key CPOMS entry of 7.3.22, and other CPOMS entries relating to Z and U. She then provided two statements in July and another in October 2022. Her first statement was simply a recital of the CPOMS entry with a brief reference to informing MASH with HH and her completion of a MASH referral form. Her second statement gave a few more details relating to her discussion with Z. Her final statement gave further details.
190. Alongside the evident impact on GG of what she thought Z had said, and the way in which she notes that critical descriptions were volunteered by Z, significant concerns have also been raised in relation to her recording of her discussion with him, and in terms of the quality of her recollections.
191. In terms of note-taking:
 - She did not take full notes of both questions and answers during her discussion, but preferred to maintain eye contact and attention with a child rather than be preoccupied with writing. As a result, she only noted key words as an aide memoire and otherwise relied on her memory;
 - The criteria she applied for those key word notes was unclear. She mentioned trying to 'quote his vocabulary' but also said that she wrote 'the key words not necessarily the key vocabulary but the key words so when I read it back I had a plan of what he had said';
 - She destroyed any notes that she had made. This appeared to be in accordance with a school-wide misunderstanding of data protection guidance. She fairly admitted that after a year she could only guess at those notes now;
 - The note on CPOMS contains no direct quotation marks, and it is not possible to determine what if any were direct quotations of Z's vocabulary and phrasing;
 - She made the CPOMS entry on 7.3.22 at about 1pm, which would have been some 3+ hours after her discussion with Z, and straight after the MASH referral call at 12.25;
 - By the time she made her note she had discussed the content of her meeting with HH, II and during the telephone call by HH for the

MASH referral, and she had become upset, but her note would not have been affected by the content of the MASH Note nor by anything she may have overheard later that afternoon in the police initial questioning discussion with Z;

192. In terms of additional features of the discussion with Z:

- She had no time to plan or consider the discussion before she was charged with undertaking it;
- She said she was aware of the concerns set out in the SALT report as to Z's abilities and difficulties;
- GG said that Z's account was volunteered with very little questioning from her and he was 'quite focussed', 'matter of fact', 'calm and factual' and he added that he didn't like it, he 'just talked' which she found 'quite unusual', and she had no difficulty understanding him;
- She found his allegations to be 'quite unexpected';
- She explained that Z had slapped his bottom to demonstrate one of the actions he was referring to;
- She said she used 'reassuring questions' such as 'Is there anything else you'd like to tell me?';
- She said she had not asked any questions leading to the use of terms penis, bottom, touching, poo, and she had not used the words slap, punch, kick, twist, willy, penis, bum or poo herself;
- She may have introduced the word 'scratch' to Z. She admitted that she would have asked about that and used that word in order to check the information in EE's note. It is argued that although EE had used the words scratch and pinched/scratched in her own note on CPOMS, she had clarified in her evidence that Z had lacked the vocabulary to name it but had shown her the wound, demonstrated it, and described how his brother had done it and why. However, I am not certain that these matters were sufficiently clearly put to EE to know whether or not she may have used the word scratch to Z in that discussion.
- GG's statement sets out that she asked 'closed questions' such as 'when and where does this happen?', 'how often?', and she also accepted that she must have asked about who did it in order for Z to tell her Y's name, school and year group, and she also asked about any marks and bruises;
- While in fact, by the end of her evidence, it emerged that she had asked quite a few questions, she was adamant that leading questions had not been asked as she knew how important it was to avoid them, it is not possible to be certain given the lack of proper note-taking and that her initial evidence was that very little questioning had taken place;

- She confirmed the use of the present tense as set out in her note, which persistently used verbs in the present tense where, for example, EE had used the past tense (such as: sends, cries, pinches, scratches/sent, cried, pinched, scratched). This included recording Z as saying 'slaps', 'looks' etc, and asking Z 'When does it happen?' and 'Where does it happen?', which implies an ongoing course of conduct. It is argued firstly that this might distort the meaning if Z had used the past tense, and secondly that this would have been confusing to Z if it was wrongly used in reference to a single event or past events, and might lead him to try to think up responses to answer those questions and thus add to his account;
- This discussion came exactly one week after the meeting between Z's teacher and M, and at which M is said to have appropriately reprimanded Z for his unacceptable behaviour relating to personal boundaries and privacy 'at length' and being 'very firm and clear'; and it also came a few days after Z was given a week-long time-out from Kingball;
- Z would have been unaware of the reason for being taken out of class by II or for the discussion with GG and may have been anticipating something similar.

193. An important anomaly in her note is that the words 'penis' and 'bottom' are used. Nowhere else is Z recorded using those words, but uses the terms 'willy', 'bum' and 'private/s'. HH confirmed in her evidence that the school encourages the use of correct anatomical terms rather than slang or informal names. GG was 'as clear as I can be in my mind' that Z had used those terms 'as we pay great attention to the words children use', but confirmed that she did not think she had written 'penis' down as a key word. Nor could she remember what other word might have been used given the passage of time and her evidence that she was sure he used penis. Given that she did not think that she recorded it as a key word in her notes and he uses it nowhere else, it is unlikely that it was a word that Z used. Given also that GG used some terminology and concepts that were somewhat prim and conservative, and where the school routinely corrects children's terminology for sexual anatomy, I consider that it is more likely that GG substituted the words 'penis' and 'bottom' in place of whatever terms Z had used.

194. The implications of this are that:

- We do not know what terms Z used in this discussion for those body parts;
- It may be that GG replaced terms that she misinterpreted as slang for those body parts, and it may have been that Z had referred to or meant something else;
- GG's reliability in terms of providing an accurate record of Z's account is in doubt.

195. It is argued on Y's behalf that the significance of a misunderstood substitution at this stage is potentially great.

- Firstly, both the police and CC record GG reading out her referral to Z at an early stage in the police initial questioning at school. If she had wrongly substituted the word 'penis' or if that word provokes a different understanding or other thoughts in Z's mind than the actual word he used, then that will have wrongly prompted Z.
- Secondly, the term 'pinkie feet' is recorded in CC's note of that police initial questioning discussion. It is impossible to know what Z meant by that term. It may have been the term that GG misunderstood and substituted with penis (although this was not put to her).
- Thirdly, his use of the term 'pinkie feet' comes after GG had been asked to read out her referral to remind Z, and it is his first mention of anything in relation to his bottom. He is then recorded by CC as saying: ' "...He opens my bum, and he sees it, he puts his pinkie feet." When asked where the brother puts the pinkie feet Z replied "I use it for my poo, it feels so dizzy that happen on Friday" .' It is therefore argued that Z could have been wrongly or confusingly interpreted, wrongly reminded and prompted, and thereby led astray to give confused and confusing accounts that are therefore unreliable.

196. It is helpful here to consider the Hydromol incident. This was first mentioned by Z to GG here: *'He said his brother puts hydromol cream on his own penis and on Z's face.'*, also at the police initial questioning at the school and during the ABE interview. During the initial questioning CC noted as follows: *'My brother put his cream on his willy and puts on my face, wipes the cream on my face... Z explained that the name of the cream that his brother uses is Hyddromol cream, there is one tub on his mother's bedroom and another one on their bedroom'* (sic). During the ABE interview he was asked about this incident and named the cream ('Hydroma') and its use as *'for when you shower... and you towelled and cream yourself'*. He describes seeing Y put it on his willy and demonstrated how Y had done it by moving his hand in a single sliding movement and then his hand coming back down. I do not consider that this was a repeated up/down self-stimulation movement but a description of creaming your skin with an emollient as he described. He did not report telling his M about it, nor the circumstances in which this took place.

197. M states at paragraph 60 of her second statement: *'Y caught Z watching Y after he had finished bathing. He went into the bedroom to apply body lotion, I think Hydromol, and was getting dressed. The door was not entirely closed and Z was watching him undress. When Z saw him, obviously he was annoyed and had first shouted at him, but Z continued to watch him. I understand that Y then pushed the door. Y applied cream on Z's face when he peeped again. Y was annoyed with Z for peeping on him. Z did not report that Y had him, he had complained in a very angry manner that Y had put his hand on a dark part of Y's body, then put cream on Z's face.'* She said Y had not spoken to her about this but was aware she had told Z not to go into the room where Z was changing, and she could not be exact but thought this happened about a week before

4.3.22 and at a weekend when the boys bathed. She was not entirely clear what was meant by the term 'dark part' but implied that it was Y's genital area because in her answers and statement she moved on to discuss bodily changes at puberty. I note that M's alternative take on this, to place Z in the wrong, is an issue raised by the LA as demonstrative of M's unsupportive or negative attitude towards Z and will be discussed later in this judgment.

198. While I have concerns about the reliability of the record of what Z said at the initial questioning and of the ABE interview, which are discussed later in this judgment, what he said on and demonstrated on each of those occasions does not depart from GG's note save that the word willy is used instead of penis. He gave more details in those later accounts relating to the whereabouts of the tubs, the purpose of the cream and Y's actions. It is accepted that this is an emollient cream, which M has told me is used to relieve eczema.
199. On balance, the combined picture leads me to conclude that Z is likely to have used that word 'willy' in the description of the Hydromol incident to GG, and that was the word she interpreted as penis. It is therefore likely that her substitutions of the word penis in her note are also likely to refer to Z's use of the word willy. Just because the substitution is 'accurate', a willy is slang for a penis, this does not preclude that Z hearing the word penis as a substitution for willy might not have been confusing or led him onto a different track.
200. Equally, because Z slapped his bottom while describing such an incident to GG, it is likely that GG substituted the word bottom for whatever word Z had used to describe his bottom and there is unlikely to have been a mistake made in that respect.
201. In places GG confused EE's account with her own, for example she admitted in oral evidence that Z had not in fact mentioned the holy book to her but only to EE and so she must have taken that from EE's note rather than her own discussion with Z.
202. A further significant aspect of GG's evidence related to the conduct of the police initial questioning discussion at the school. She was invited to attend it as the appropriate adult and known to Z, but she took no note and wrote no entry on CPOMS. She provides no detailed account of this meeting in her written evidence. In terms of her direct role in that discussion, her recollection in oral evidence differed from that of both CC and as recorded in the police material. Namely she insisted that she had not spoken at all and had not read out any part of her referral document, but that the police officer had said asked Z to tell them what he had told GG earlier. Whereas CC recorded that GG read out 'a few lines' and the police note states that '*No disclosure of sexual abuse had been made at this stage so I requested that the assistant head teacher ask Z what they had spoken about earlier when the disclosure was made. It was at this point that Z disclosed that his brother had grabbed his private...*'. Another example relating to this meeting was that GG could not recall Z saying that Y had farted in his face, although this is a notable example of Z's reported account which is set out in CC's record.
203. The impression I gained from GG's evidence is that she did not see herself as playing any formal role in this initial questioning discussion – she was sitting in but she told me that she 'wasn't part of the interview'. It was being run by the police, who had at last

arrived. The social worker was also present, and the school witnesses I heard from all explained how they would be expected to hold the situation at school until children's services and the police arrived, at which point their job was done and those agencies would take over. This discussion between Z and the police was then taking place at about 5/5.30pm and it had clearly been a very long and stressful day. I also note that GG initially wrongly recollected that the police officer had taken notes.

204. I have not been able to hear from the police officers who were there and recorded a very brief summary note which does not make it clear to what extent GG may or may not have spoken in response to the request to do so. However, I have heard from CC who was clear that GG had spoken. In her oral evidence, CC confirmed that GG said to Z: *'we are going to talk to the police and remember the conversations we had earlier on when you spoke about certain things'* and GG then started to have a conversation with Z. CC explained to me that GG was both having a conversation with Z reminding him and reading from her referral, noting that GG had a paper in front of her as well as her computer screen.
205. There are three different recollections here, although I apply less weight to the brief and untested police note. Although CC's account is imperfect, and I come on to consider her evidence in more detail below, she at least had made some notes and wrote up her recollection the following day. This element of her note and evidence related to another adult's input into the process that evening, and was not related to the content of Z's allegations which may have been affected by the inaccurate summary that CC had already read from the MASH Note. For all the above reasons, including the previous points I have considered in relation to the reliability of GG's recollections, I prefer CC's recording in her note of 8.3.22 and her oral evidence, and I consider it is likely that GG was prompted to read out her referral to remind Z and did so.
206. Looking at GG's evidence overall, and her note of Z's account to her on 7.3.22 in particular, I bear in mind the following which flow from the above discussion. While I am persuaded that some of the wording she recorded was imprecise (such as use of the present tense and a lack of direct quotations), some of it was plain wrong (penis, bottom), and the method of note-keeping and recording was inadequate and inappropriate; while I have made findings that some of her overall recollections are unreliable, that she may have started her discussion with Z with some possibility of sexual impropriety in mind, and the recording she made of it was 3 hours later and while upset and stressed; there does at first sight appear to be a core of volunteered information using words that were not prompted by GG.
207. In that context I therefore turn to consider what I can safely conclude that Z said and meant.
- Although there have been some submissions made in relation to the potential introduction of the term 'scratch', I note that GG was clear that Z had repeated to her the same account he had given EE when GG asked him about it. In response to her simple question who had done it he gave Y's name and details of his school.

- In combination with my findings in relation to his first account to EE, I am confident that Z was referring to and meaning that the small wound on his neck was inflicted by Y.
- GG recorded Z to use the word slap and in association with that happening every day or nearly every day. This was not a word introduced by GG. Z mentioned it in a context of sibling competition over the use of a computer and lack of space in bed. I am confident that Z referred to and meant that he was struck by slaps on a fairly frequent basis, but given the concerns set out above as to his difficulties with the expression of timings I cannot be confident that he meant 'every day' in an exact sense.
- GG's note refers to 'his brother' doing the slapping. While her noting is inexact as discussed above and it is clear that Z was not naming a specific sibling, I am confident that it can be safely inferred that Z was referring to the brother with whom he shared use of the computer and the bed at home, and therefore meant his brother Y.
- GG then records Z saying his penis was touched with both hands, and that his older brother twists and hurts it. GG substituted the word penis. Z has referred to some part of his body that was twisted and made to hurt. The feeling of hurt makes it clear it is a body part, and that it is something Z was feeling rather than his brother. The use of the word twist was volunteered by Z. It can be safely understood that Z meant that a part of his anatomy was touched by both his brother's hands, was also twisted by his brother and that this caused Z pain. Given my analysis above in relation to the substitution of the word penis, it is likely that whatever word Z used was the slang for penis and that is what he meant.
- Given that Z slapped his own bottom as a demonstration when describing this action to GG, I consider that it is safe to conclude that Z meant that his bottom was slapped, even if he used a different and unknown word to describe that part of his body, and that this was also done to him by his brother.
- Z's description of 'poo in his bottom' is the introduction of a word not used by GG, namely 'poo', but also in association with GG's word bottom. We cannot know what word Z used instead of bottom, but as the term used by GG is the same as the word used in relation to the slapped bottom discussed earlier, it is safe to conclude that it is likely to have been the same term used by Z and therefore Z is likely to have said poo in association with that word meaning bottom.
- Ignoring the unhelpful use of the present tense, GG records Z as using the verb 'look' and the word 'in'. Despite the overall inexactitude of GG's recording, the description recorded here involves the direction of his brother's gaze to the place on Z's body,

his bottom, where poo is, and I conclude that it is likely that this is what Z meant. However, it is not possible to extend that understanding of what Z meant any further. So by the term poo it is not possible to know if Z meant looking at faecal matter itself within his anus, or simply meant looking at his anus.

- The description of his brother putting his penis in his (Z's) bottom at the back contains both of the problematic substituted terms. Again I conclude that it is likely Z will have used the same unknown term to refer to his bottom as when he slapped his behind. It is not possible to know what exactly he meant by 'at the back'. The back of the bottom may not mean the anus but may equally refer to the rear of the buttock cheeks or the crack between the buttock cheeks at the base of the back of the body. The use of the word 'in' in the context of 'in his bottom at the back' may mean in between those buttock cheeks at the rear of the body or may have a meaning of penetration of an anus. It is certainly not possible nor safe to conclude that he meant penetration given the limited nature of the discussion and its recording.
- The use of the word penis in this description has the same problems as discussed already. However, due to its association with the action of putting in, it is likely to be a part of his brother's body that is capable of being placed or inserted. Although this could, say, be a foot, hand, finger or penis, given my conclusions set out above regarding the substitution of the word penis, I can conclude that Z was likely to be referring to and meaning his brother's penis.
- It is possible to go this far in concluding that Z used words that meant his brother placed his penis in contact with Z's buttocks and probably in between them.
- Z named the brand Hydromol cream to GG, and is recorded saying that his brother put it on his penis and on Z's face. The use of the word penis arises again, and I have concluded above that it is likely Z used a word that means penis and that his brother also put it onto Z's face.
- Z did not say when 'this last' happened or how often, notwithstanding GG's evidence that she did ask him those types of closed questions. 'This last' appears to refer to the last allegation described just before that point in GG's note, namely the reference to Hydromol cream.
- The frequency associated with slapping is considered above. In respect of the other actions referred to, despite the use of the present tense in relation to the reported allegations (touches/twists/hurts/looks/puts), it is not possible to safely understand or infer any kind of frequency beyond an occurrence that may have been only once.

- Z referred consistently to a brother. When this was checked by EE regarding the scratch he specifically ruled out U and referred to the brother with whom he shares a bed and whom I have found was Y. He referred to Y when asked by GG who had scratched him, and then GG records that he referred to brother/older brother. Z does not draw any distinction between the brother who scratched him – Y, the brother involved in the Hydromol cream incident – also Y – and the brother whom he describes as performing these other actions. On balance, it is likely that he is throughout referring to and meaning Y.
- The reference to Z's M knowing about the scratching and slapping but not about the penis is likely to be in response to a question from GG asking if anyone knew or if he had told anyone. It can safely be taken to mean that he believed his mother was aware of those physical conflicts of scratching and slapping, but that he had not told her about the one or more of the other incidents which are penis related.

208. There is an important argument made as to reliability. His vulnerabilities are set out earlier in this judgment. In particular, Z could be easily led and willing to find answers in order to please. English is not his first language. There are examples in the evidence from the ABE interview that he picks up on verbal cues and can react or repeat accordingly.

209. Plus, this discussion was taking place in the context of having been in trouble twice the previous week. I have no doubt that this was sensitively handled by the school, but Z had recently experienced being firmly corrected by his mother in front of his teacher and being told by EE that he was not allowed to play a favourite game for a week. He would be likely to have experienced those occasions as negative. No child wants to be in trouble or told off. On the other hand, he was not actually in trouble and did not know what was going to be discussed with him, and he is therefore more likely to have been spontaneous in his engagement.

210. I have also borne in mind that Z has apparently shown his most challenging behaviours at school and has benefited from close support from his TA EE, his teacher and other school staff. EE noted the positive impact on Z of her providing calming attention, without interruption of that attention being focussed on other children. It is suggested that this is also a factor that he would have been experiencing here. GG would have been providing him with her focussed one-on-one attention, supported by gently encouraging questions. This, it is claimed, may well have influenced him to grow his account and add in answers and descriptions in response to that attention and in order to please his questioner rather than from reporting his actual experiences.

211. However, GG did not describe him as worried, upset, anxious or attention-seeking. It was her evidence that Z spoke in what she described as a strikingly calm and focussed manner, in some contrast to what others have observed as his typical presentation of distraction, lack of focus, and inattention. While she may have asked more questions

than she at first recalled, this was a notable aspect of her evidence which was persuasive in its detail. Although pressed as to the nature of the questions she asked, it was clear that she had a good understanding of avoiding leading questions and all the examples she gave were non-leading, open or reassuring. She described his answers as 'unexpected' and that he 'just talked'. In those circumstances I conclude that it is more likely than not that she did not use leading questions and what she was describing was a period of free narrative.

212. In this context, while I take into account her preceding discussion with II relating to some concern as to possible sexual impropriety, I note that GG's perceptions were not, of course, tainted by the inaccurate references to anal penetration that were subsequently set out in the MASH Note.
213. Z also referred accurately to the name Hydromol for the cream used in his family for their dry skin condition. This was volunteered and unknown to GG. It is also a reference to an incident of which M is aware and has given evidence, and which evidence chimes closely with the brief note of his account to GG. He also referred to quarrels over the use of the computer, which was also a feature of M's explanation of the source of some difficulties between the boys and was information offered independently to the social worker CC only two days later. These details support the conclusion that this account is reliable.
214. This discussion is not strictly covered by the ABE Guidance, but as we have learnt from the Cleveland Enquiry and in numerous cases since, the key principles are still in play. I do not criticise GG – she was a caring and conscientious teacher who was doing her best and believed she was following advice and good practice. She lacked specialist training and some of the advice was unhelpful. I have carefully considered the problems with her record of this discussion, and I am mindful that these challenges add to the difficulty of appraising the reliability of what she recorded.
215. I am reminded of a key passage in **P [2019]** under the heading Initial Contact with a Child Alleging Abuse:

"589. The departmental advice What to do if you're worried a child is being abused (HM Government, March 2015) (replacing previous guidance published in 2006) states that before referring to children's services or the police an attempt should be made to establish the basic facts. The Guidance makes clear to readers at [25] that "it will be the role of social workers and the police to investigate cases and make a judgement on whether there should be a statutory intervention and/or a criminal investigation". Within this context, the following is said at [28]: "The signs of child abuse might not always be obvious and a child might not tell anyone what is happening to them. You should therefore question behaviours if something seems unusual and try to speak to the child, alone, if appropriate, to seek further information". And at [29]: "If a child reports, following a conversation you have initiated or otherwise, that they are being abused and neglected, you should listen to them, take their allegation seriously, and reassure them that you will take action to keep them safe."

216. Looking at the circumstances and context overall, I am satisfied that this is what both EE and GG did, and, while bearing in mind Z's vulnerabilities and all the features of this

record of Z's account to GG, I conclude on balance that this account should be treated as a reliable piece of hearsay evidence to be considered in the overall picture.

POLICE INITIAL QUESTIONING & SOCIAL WORKER CC

217. In this section of my judgment I am focussing on the accounts recorded as given by Z and I will deal with CC's interactions with the parents later in this judgment. The principal reason why CC's record and evidence is important is that she was the sole note-taker during the police initial questioning discussion at the school.

218. It is helpful to include here the core observations set out by MacDonald J at paragraph 1245 of **P [2019]**:

"In circumstances where there is a wealth of guidance for professionals and the police, it is not appropriate for this court to reinvent the wheel or burden those tasked with dealing with this fraught area with further detailed instructions. [...] That said, it does appear that the following "lessons" bear repeating as the foundation of rigorous forensic investigation by professionals and police of allegations of child sexual abuse. I venture to suggest that whenever a referral is received in a case that raises allegations of sexual abuse the social worker or police officer allocated to the case should, before they do anything else, pause and remind themselves of the following checklist of ten cardinal principles:

i) The investigation of child sexual abuse is a demanding, complex and sensitive task and should be undertaken by those who have received the requisite training.

ii) Very great professional care is required when dealing with allegations of child sexual abuse, both in the initial phases and at the ABE interview stage.

iii) Whatever the nature of the child's presentation, and whether the response is immediate, prompt or deferred, the response of professionals and the police must be planned. Children's best interests are rarely served by precipitate action.

iv) The primary principles governing, and the procedures for the investigation and assessment of alleged child sexual abuse are those set out in Achieving Best Evidence 2011 and Working Together 2018 and must be followed in all cases.

v) Any investigation into child sexual abuse that focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable, or if the child's primary caretaker is unreliable.

vi) All interactions with a child who is making or appears to be making an allegation of child sexual abuse have the potential to influence that child's memory.

vii) Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of professionals and police. Those speaking to children who have made allegations of sexual abuse must keep an open mind with respect to the allegations made and must guard against the development of bias or preconceived ideas. A professional who loses their objectivity ceases, by definition, to act professionally.

viii) Questioning the child should ordinarily be left to a formal ABE interview. If any initial questioning is necessary, it should be limited to eliciting a brief account of what is alleged to have taken place; a more detailed account should not be pursued at that stage.

ix) Anything the child says must be recorded in a note that must detail (a) the timing, setting and people present, (b) what the child says in the words used by the child (avoiding summaries of the account in the interests of neatness or comprehensibility and avoiding recordings of the adult's interpretation of what the child said), (c) a full note of the actual questions asked (if any) and (d) what was said by anybody else present.

x) Overall, the proper methodology is one that combines listening to the child and taking them seriously with an open-minded approach that takes account of both sides of the story, is open to new evidence that disconfirms original ideas, that reasons dispassionately, that demands that claims be backed by evidence and that deduces and infers conclusions only from available facts."

219. And I am also reminded of the following paragraphs which apply:

"591. The ABE Guidance goes on to state at [2.6] under the heading 'Initial Contact with Victims and Witnesses' that a person engaged in early discussion with an alleged victim or witness following an allegation should, as far as possible, (a) listen, (b) not stop a free recall of events and (c) where it is necessary to ask questions, ask open-ended or specific closed questions rather than forced-choice, leading or multiple questions and ask no more questions than are necessary to take immediate action. Within this context, and in the context of an examination of the ABE guidance, in **Re S (A Child) [2013] EWCA Civ 1254** at [16] the Court of Appeal held that, with respect to initial contact with alleged victims, discussions about the facts in issue in respect of an allegation, as distinct from whether and what allegation is being made and against whom, should be rare and should not be a standard practice.

592. When social workers are speaking to children who have made allegations they must be very careful to consider the purpose of the exchange and whether it is being conducted with a view to taking proceedings to protect the child or for separate therapeutic purposes where the restrictions upon prompting would not apply but the interview would not be for the purposes of court proceedings (*Re D (Child Abuse: Interviews) [1998] 2 FLR 10*)."

220. CC completed a number of social work records and a statement dated 11.3.22. The first document in time is the Post Visit Form on 8.3.22 which is set out in part at paragraph 27 above, then the Record of Outcome of Section 47 Enquiries and a Strategy Meeting both also dated 8.3.22 and which contains within it the same wording of her notes of the police initial questioning discussion that took place on 7.3.22. She met with M at the school on 7.3.22 and with the parents together on 9.3.22. She conducted statutory visits to see the children in March and April 2022. She was replaced as the allocated social worker in early May 2022.

221. She appropriately acknowledged her memory was not complete and said: 'some of the things I saw and heard stick in my head and others are difficult to remember as it was almost a year ago and I do have other cases. It is fair to say I don't remember everything'.

222. CC was allocated to this referral on the afternoon of 7.3.22. She read the MASH Note which I have already discussed above. She arrived in the afternoon before the police but says she held no discussion with the children as she said that this was not permitted. By contrast the staff recall she spoke to the children. There are further

- aspects which suggest that she misunderstood her role. She did not view Z being transported alone by the police as inappropriate. She left the police station prior to Z's interview, but after having pointed out that Z was already tired and been waiting a long time. She said she was not aware he would be interviewed without a social worker but I have no evidence that she took steps to clarify this and make arrangements. She was told by the police that they were going to keep Y in custody. In neither of those circumstances did she check or pursue welfare and procedural issues with the police.
223. She was invited to be present during the police initial questioning discussion at the school, made notes and wrote them up the following day. She did not have specialist training nor support for this task. She found it difficult to identify appropriate types of questions and their significance when interviewing children. She did not ask questions herself during the meeting.
224. She made notes but they did not record both questions and answers. She also destroyed her notes. There are gaps. There is sporadic but irregular and inconsistent use of quotation marks which she said were Z 'probably telling her'. It is clear that these notes were not intended to be a complete verbatim record but more of an aide memoire or 'summary' of key points documented into her social work documents.
225. CC should not have been in this position as sole note-taker. The police chose not to use a body-worn camera because Z or the school apparently demurred. The police also chose not to take a full and careful note as required. CC recalled some note-taking by an officer, but this is not borne out by the police record. However, an allocated social worker should have been sufficiently well trained to have spotted the need to identify and implement good practice and address any problems and requested that appropriate recording take place.
226. The problem with not recording the questions and only the answers is that there is a significant risk that the recorded answers are not seen in the context of what may be leading or inappropriate questioning. It is clear from DC B's approach during the ABE interview, as discussed later in this judgment, that knowing what questions were asked by him here is critically important, and that without the questions understanding the reliability of any interpretation of the answers is dubious and extremely difficult. I also note that her record shows at least six questions plus the prompting exercise, and her oral evidence indicated that a great deal more questions must have been asked. Given the question-heavy ABE interview process that followed, it is impossible to know without those questions being noted here how many more had to be asked, how many misunderstandings took place, how many concepts or preconceived notions were conveyed and led.
227. There was also clearly no sufficient planning undertaken at all. There is no note nor could CC recall in detail any initial questioning discussions with the school staff. Neither CC nor the police checked or were aware of Z's vulnerabilities or language issues. There is no record nor consideration of how Z was presenting in that context. No steps were applied in the absence of that information. CC noted later in her recording that it was her "*professional opinion that Z might have some underline (sic) needs, but I am mindful that this presentation when talking to him it could be due to possible trauma that it might explain his behaviour.*" It does not appear that this opinion was shared

- with the police during or after the discussion to consider the impact of this information, nor before Z was taken to the police station for further interview.
228. This is of critical importance given the content of the 2021 SALT report that I have summarised above at paragraph 143 and the recent referral of Z for counselling by the school with their suspicion that he may have some underlying special educational needs.
229. No professional appears to have been aware of the significant difference between the MASH Referral by GG and the MASH Note of the telephone call.
230. The matters I have dealt with earlier in this judgment at paragraphs 53-68 are relevant here and not repeated. Any notes made by CC were made with the prior awareness in her mind of the content of that inaccurate MASH Note with its references to bending over and using cream to penetrate Z's back passage. It is not noted by CC or in the police records what discussions were held between them prior to the initial questioning. I note that DC B's CRIS entry refers to the police being 'informed of the referral' but without a Form 87a being sent. A Form 87a is sent within 24 hours by the social worker to the police Child Abuse Investigation Team giving notice of a relevant incident in order to ensure that the police are involved in any strategy meeting. This does not preclude the police having seen the MASH documentation and/or discussed it with CC.
231. CC's record begins, as I have referred to earlier, with this summary under the heading Current Concern. It is an almost identical cut-and-paste but with names and dates inserted from the inaccurate MASH Note, and also includes the reference to 'several records' of Z presenting inappropriate sexualised behaviour. This Note conveys an inaccurate and exaggerated picture with the use of the plural references to 'girls/them', and as noted above, what Z actually did does not properly attract such a label. This information was not checked by the police nor CC prior to the discussion.
232. The section School Visit goes on to deal with the meeting and appears to cover the only material showing rapport development with a very short period of apparent rapport building: *'1700 hours – The conversation with Z begins with Z talking about what he likes. Z reported that he is in year 3, likes the school and his favourite lesson is maths, Science, and geography. Z likes timetables and rockstar. After that the professionals introduced themselves and explained about their roles. The lead professional was DC B. Z reported that he saw a police badge before in computer games. When asked what happens at home, Z replied that he forgets things. Police office said that it was ok and asked what he remembers.'*
233. A fundamental difficulty with this discussion arises for the reasons I have already explored in relation to prompting Z by reference to his earlier discussion with GG. CC's note reads as follows:
'When asked about to describe the bedroom Z said that he sleeps with his brother on the top end Y sleeps on the bottom end. "He pinches here (points to his neck on the left side), did it last Friday night. I was going to sleep to Sunday. He always farts on my face, kicks me on my leg it hurts. He is stronger than me. He has no visible bruises or marks. Z said that was everything.' (my emphasis). GG is then invited to remind Z of his earlier comments and then chats with Z and reads out her notes as I have found above.

234. This is wholly contrary to good practice and a fundamental flaw, particularly where Z had stated *'that was everything'*, and by that point had not mentioned anything to do with his or Y's private parts. The police note (quoted above in paragraph 205) says it all: no disclosure of sexual abuse had been made by that point so he had to be reminded of what he had disclosed, and it is only thereafter that he expanded his account and began using gestures.
235. While I acknowledge that at first sight Z is recorded in CC's note as having made a number of allegations of interference by his brother which appear to fit with the discussion he had with GG, his account goes a good deal further in this discussion with references to kicking, seeing his privates, touching his privates, opening his bum, touching his poo, putting pinkie feet, feeling dizzy, feeling squidgy, his brother shaking. It appears, albeit without the questions available, that it was Z who introduced these particular terms.
236. I also note that CC gave vivid evidence of her recollection of Z's gestures and body language, for example: one hand moving towards the genital area, one moving towards the bottom, a twisting of the body, the head moving away, the face squeezed, eyes tightly shut and moving the head to one side. It is asserted on Z's behalf that this was powerful and congruent with his allegations. I note that none of these were in her note nor noted against particular answers.
237. The LA also relies upon CC's own reaction: *"I have never heard the level of detail and the use of body language and pointing to different parts of his body ...he was telling us a story ...it was different from other cases I had seen"*. This relates more to CC's own levels of experience and training. It is extremely dangerous to rely on the reaction of another person to establish the veracity of a child interviewee. I also note that she will have been experiencing this reaction and interpreting Z's account and behaviour having been incorrectly informed by the MASH Note that he had previously disclosed bending over and his back passage being penetrated.
238. There are a number of significant points of uncertainty and inconsistency in the note and her account, for example:
- Z's dates and timings were all over the place: the scratch was reported to have happened last Friday night (rather than before school that day), Z was going to sleep to Sunday, the reference to pinkie feet and feeling dizzy was also on Friday, he then cites 'Saturday'/'Saturday and Sunday'/'Friday Saturday and Sunday'/'Yesterday';
 - CC used the phrase 'he gave the impression that' to deal with his references to dates;
 - Z used a nonsense or indecipherable term 'pinkie feet' – significantly, this is at the first point in this discussion where he makes any mention of anything being put in or near his bottom;
 - It is unclear what Z meant by 'open' his bum;
 - There was no clarification of what he told M, nor what Z meant when he used the term 'it' when referring to his F saying 'if it happens again the brother will be in trouble';

- CC was uncertain as to key aspects of the precise wording;
- She accepted that there could be alternative explanations for one of the movements she described, but declined to consider others might be due to squabbling over space in bed, fighting, or other non-sexual connotations;
- No questions at all are included in her note.

239. Her evidence also revealed her underlying assumptions and blanket approach:

- There was no consideration of the inconsistencies or problems arising in Z's account and CC said her role was *'to record what the child was saying and not dispute it'*.
- CC told me that *"all [she] had was a child narrating a story and making gestures and pointing to his body"*, but this approach failed to incorporate a proper consideration of all the material, to spot inconsistencies and influential but inaccurate wording/summaries, to understand all the difficulties associated with the careful task of obtaining and appraising allegations made by children.
- When Z was apparently asked what he had told his M, CC referred to Z being asked *'if he ever mentioned it to anyone'* and when asked what *'it'* was, she said *'the disclosure, the allegation'*, whereas many different things had been mentioned.
- CC was not prepared to consider that Z's physical expressions of disgust or dislike or certain movements he demonstrated might not have been due to sexual behaviour but might relate to unpleasant behaviour and two brothers being forced into intimacy and proximity by having to share a bed.
- A significant element of CC's evidence was how struck she had been by Z's reference to the Hydromol cream. While she could not remember what the question was that had been asked about the cream, she did recall as follows: *'Z saying I know the cream and then he got up and said I can spell it for you and said if you go on the internet, you can find the cream and he said there was a tub in his bedroom and another tub in his parents' bedroom and said that was the cream they used for eczema'*. She said later: *'For him to recall and saying I can spell it for you without being asked. I thought how can a child? It was like he was telling us a story. So it was different from other cases'*. I do not find it surprising that Z might know the name of his eczema cream, which he uses most days. Whereas this is what had struck her with shock. I consider that her thinking and her reaction must have been influenced by the content of the MASH Note which refers to *'hydmore cream'* (sic) as a lubricant in an act of anal rape.

240. DC B has not been available to give evidence. There is a brief entry made by him in the police CRIS records:

'During the conversation Z informed me that he shared a bed with his brother Y who goes to S School who physically hits him, he stated that his brother had hit him and scratched his neck and that this happened on Friday, Saturday and Sunday. No disclosure of sexual abuse had been made at this stage so I requested that the assistant head teacher ask Z what they had spoken about earlier when the disclosure was made. It was at this point that Z disclosed that his brother [engaged in sexualised behaviours towards Z]. I confirmed that with him who this brother was and he confirmed with me it was Y, his 11 year old brother who he shares a bed with'.

241. I have been provided with a detailed list of questions and issues that would have been explored with him on Y's behalf. Without his explanations, I have little if any information for example, as to: his experience and training; his familiarity with the ABE Guidance, with intra-sibling sexual abuse, with interviewing children; his application of the ABE Guidance here, or not; why choices were made not to record the initial questioning discussion, not to record rapport building, not to plan for either the initial questioning discussion or interview; why information was not checked as to Z's language, vulnerabilities, needs; why GG was asked to remind Z of the earlier discussion; what questions were asked during the initial questioning discussion; record keeping on the CRIS records and how he came to record the term 'inside' when this is not a word that Z is recorded as having used at any point in relation to the willy/bum issue; timing and management of the ABE interview; why there was a 4 hour delay between the initial questioning discussion and the ABE interview; why CC was sent away and the absence of an appropriate adult; his response to the numerous breaches of the ABE Guidance in the ABE interview.
242. In the circumstances, and without a proper record, as required, it is simply not possible to assert, as has been submitted, that there is no suggestion that leading questions were used or that Z was not stopped from free recall.
243. I am driven to accept many of the detailed submissions made on Y's behalf that there were numerous breaches of the ABE Guidance. Both this stage and the later ABE interview were subject to this Guidance and multiple breaches are demonstrated:
- Section 2.1-2.7 of the Guidance - the rationale for this degree of detailed initial questioning is not apparent. The CPOMS note, MASH Referral and MASH Note provided sufficient information to guide the next steps of the investigation, such as arrest of Y, samples and ABE interview.
 - The initial questioning involved going into details and numerous questions plus a prompting exercise. This cannot be characterised as eliciting a brief account nor a focus on evidential issues, and clearly descended into 'evidential detail'. It was described as an interview by CC and GG, and has to be seen as more than an initial brief checking exercise.
 - These details were pursued and prompted without planning, and there is no record of any planning (section 2.32)
 - Proper planning which would have alerted to the proper management of any questioning or interview process (section 2.31),

with further breaches of sections 2.246, 2.251 and 2.252 of the Guidance, where proper preparation of the witness (fatigue, intermediary, interpreter), rapport building and consideration of communication issues is required.

- Linguistic and cultural issues were ignored (sections 2.19 and 2.23).
- No information was obtained from social services, the parents, the school and GG in particular to assist with important background information as to the family, V Council, Z's older brother A, Z's vulnerabilities (sections 2.2, 2.27, 2.28 2.30, 2.32, 2.40).
- Box 2.1 Checklist of desirable information – almost none of this critically important information was checked for or known. While there needed to be a balance with a desire to conduct an interview as soon as possible, it was unclear what could have meant that the police thought it better to proceed with this degree of ignorance at this stage or again at ABE interview stage, given the importance of the content and the passage of time (approximately 4 hours between MASH referral and initial discussion, and a further 4 hours between that discussion and the ABE interview).

244. Overall, I am satisfied that for the important procedural and forensic reasons discussed it is not possible to be safely clear about what Z said, what may have prompted what he said or demonstrated, what he may have meant by it, nor therefore to be able to safely rely upon it. The conduct of this initial questioning exercise has ultimately undermined the overall evidential value of what Z may have been trying to communicate both during this questioning and in the subsequent ABE interview.

245. Although the police and CC would not have had the information available to me in the Triangle report, I also bear in mind Z's multiple vulnerabilities identified in that report (paragraph 160 above). Those vulnerabilities, in combination with the procedural failings I have considered, reinforce the conclusion I am forced to draw that it is simply not possible to safely determine what Z said or meant during this period of initial questioning or to safely rely upon it here as hearsay evidence.

ABE INTERVIEW

246. Numerous significant breaches, both in terms of types of breaches and detailed examples, were cited and relied upon on Y's behalf. It is notable that no other party sought to suggest those breaches were not present, but it is claimed that they would not have had a sufficiently significant forensic impact to rule out reliance on Z's account during the ABE interview.

247. Given Z's myriad vulnerabilities, already cited above, it must be right that particular care should have been taken, and particular weight and attention applies to any breaches.

248. I am reminded of passages in **P [2019]** where MacDonald J summarised key approaches based on research and good practice, and previous superior court guidance in relation to the failure to adhere to ABE guidance:

"587. Within this context and having regard to the matters set out in the foregoing paragraphs, the proper approach is likely to be one that combines listening to the child and taking them seriously whilst taking care not to prejudge the issue, an approach of neutrality but not indifference, coupled with the rigorous application of the guidance to which I now turn." (my emphasis).

"856. The ABE Guidance is advisory rather than a legally enforceable code. However, significant departures from the good practice advocated in it will likely result in reduced (or in extreme cases no) weight being attached to the interview by the courts. Within this context guidance from the Children Act Advisory Committee concerning the Memorandum of Good Practice, which preceded the ABE Guidelines, made clear that:

"Any joint child abuse interview conducted by police and social services must follow the memorandum of good practice. Otherwise, not only is the resulting interview of no forensic value, but it may impede or contaminate any further assessment of the child ordered by the court."

The Court of Appeal has on repeated occasions allowed appeals against findings of child sexual abuse where there has been a failure (i) to undertake proper preparation, (ii) to note carefully the preparatory work undertaken with a child, (iii) to understand the background to allegations being made; (iv) to abide by rules as to questioning; (v) to follow guidance as to being open-minded and (vi) to engage in repeated interviews (see for example *TW v A City Council* [2011] 1 FLR 1597; *Re W v Re F (Children)* [2015] EWCA Civ 1300 and *Re E (A Child) (Evidence)* [2017] 1 FLR 1675." (my emphasis).

249. In relation to what appears to be a clear breach here of Court of Appeal guidance to undertake an open-minded interview, especially to avoid trying to get Z to repeat on camera what he may have said earlier, I am reminded of **TW v A City Council [2011] EWCA Civ 17**, where Sir Nicholas Wall P said:

"52. ...the Guidance makes it clear that the interviewer and that the object of the exercise is not simply to get the child to repeat on camera what she has said earlier to somebody else. We regret to say that we were left with a clear impression from the interview that the officer was using it purely for what she perceived to be an evidence-gathering exercise and in particular to make LR repeat on camera what she had said to her mother. That, emphatically, is not what ABE interviews are about and we have come to the view that we can place no evidential weight on it.

53. Against this background, the judge's assessment that LR was a forthright child capable of standing up to and overcoming incompetent interviewing does not in our judgment stand up to analysis....it is not sufficient for a judge to rely primarily on the fact that the child is able, when being interviewed, in a thoroughly unsatisfactory manner and contrary to the Guidance, to make a number of inculpatory statements. A clear analysis of all the evidence is required and the child's interview must be assessed in that context."

250. Unfortunately, the same criticisms in relation to the initial questioning exercise at the school, namely lack of planning, preparation, proper management and support for Z, attention to his particular needs and circumstances, lack of intermediary/interpreter/appropriate adult, also all apply to the conduct of the ABE interview, and I do not repeat the discussion of those relevant and applicable sections here.

251. While potentially understandable that language issues might not have been checked at school, there is no evidence of any consideration of this, let alone Z being asked

(ABE Guidance Section 2.203). I note that by this time in the evening the police must have been aware of the parents' very limited abilities in English and that therefore Z's first language and that used at home would have been . Given the already evident language issues from the initial questioning (for example 'pinkie feet') and what has been evident to every professional reporting on Z's communication skills, this poses particular difficulties. It is also almost immediately evident in the interview when Z uses the word 'invitation' in a context that makes no sense but appears to relate to the police's written account of what Z might say.

252. Another important possible example is the use of the word 'pinch'. This was used in a confusing way with EE when Z was demonstrating and describing the scratch to his neck. He repeated this during the initial questioning at school. He repeated it in the ABE interview where he again referred to being pinched on the right side of his neck, but this time referred to this being done by his brother's leg while making a motion of his foot towards his neck. This may or may not have been an invention, however DC B queried this which prompted Z to change his description and refer to the use of his hand. Although, crucially, it is not possible to be sure what Z meant, it is telling that it appears that the word pinch may have been used in the place of the term scratch. He may have mistaken the word due to interpretation/language issues. He may have used the wrong word as in the SALT report (dolphin/whale). He may have meant he was indeed scratched by his brother's toenails. However, the lack of appropriate preparation, language and intermediary support led to confusion, and DC B's reaction which prompted Z to change his account as to the body part, and not to clarify the term used for the action.

253. It is also argued on Y's behalf that this confusion is further compounded by DC B then asking a leading question: 'So if he's laying there, show me what he did to come and pinch you.' Z replied that he Z was sleeping in a particular position and continues that Y 'scrolled around' and he makes a circular motion with his hand to suggest Y moving over towards his side of the bed. It is argued that but for the multiple failings on this topic Z would not have compliantly provided answers to try to 'make sense of' his scratch/pinch leg/hand 'errors' and to please his questioner, and that this led Z to make his first reference to Y moving over towards him and using the term 'scrolled' as a way to 'correctly' answer and explain this part of his account. It is hereafter that the willy/bum account progresses with multiple references to scrolling around and adds to the lack of clarity and unreliability of Z's account. It is also notable that there is no open-minded enquiry into scratch/pinch, leg/hand or sleeping/awareness.

254. Z was bound to be tired at nearly 10pm after a full school day plus waiting around through the afternoon, plus the questioning at school, plus a further period of waiting around at the police station, and CC told the police so. They proceeded in breach of Section 2.232 of the Guidance. Ideally there should have been a single properly conducted ABE interview earlier in the evening or the next day and with adequate planning and preparation.

255. There is no evidence at all of proper witness preparation (section 2.246) nor opportunity to get to know his interviewer (section 2.252). DC B is seen introducing himself, his role, his colleague's role and the process generally at the start of the

interview. There is minimal rapport building shown in the interview and no evidence of it elsewhere in the police material.

256. The initial approach of DC B lacks clarity and presents potential pressures on Z (sections 2.248, 3.9 and 3.16). He sets out a few parameters, and states 'Once we've finished the interview you can go back to your mum and dad' and 'when you tell me what happened' and 'Your mum knows what happened' and 'That's why we're doing this'. It is wholly unclear what Z might have felt and understood in response to these comments. It is not a clear explanation of what the interview was for. It begs the questions of why they were engaged in the interview or what it would mean to 'finish' the interview so that a tired 8 year old could be reunited with his parents, and of what Z might be thinking of in relation to M already knowing what had happened. Nor is there any explanation that Z can ask to take a break.
257. DC B mismanages the part of the interview that deals with Z's understanding of truth and lies, which is particularly important to establish (section 3.20). Z gets it wrong and DC B ends up prompting him with the correct response. He follows up by a further confused attempt by suggesting lies would get him into trouble rather than establishing that Z understands truth/lies, and then says 'are you happy you understand?'. In doing so he induces an acquiescence in relation to a critical matter that Z has not demonstrated he understands correctly. These are obvious breaches of important considerations DC B is required to observe, namely the risks of acquiescence and the automatic positive responses children can give (sections 3.37 and 3.78). This lack of established understanding is a significant breach going to the weight that can be given to the evidence obtained (**R v B [2010] EWCA Crim 4**).
258. Instead of then asking open questions to encourage free narrative by Z, he initiates the substantive part of the interview by asking Z '*So do you want to tell me what it is that you spoke to GG about first, what you told her? Okay. Go on tell me.*' Z then responds using the verb 'tell' repeatedly and refers to slap, kick, Y not giving Z the computer and putting cream on his willy then on Z's face, finishing with '*I forgot what I said.*' DC B prompts again in relation to remembering what else Z told GG, and in the brief interchange that follows Z offers in a questioning tone (audible but not shown in the transcript) '*Said the F word*', which I consider is an example of Z attempting to find a way to give a 'right' answer rather than his own true account.
259. DC B then further compounds this approach by prompting Z, wrongly, that he had told GG 'stuff that had happened on Friday, Saturday and Sunday' and then asking him to tell about that.
260. The only period of free narrative is during this stage of 'telling' what Z had told GG. The rest of the interview is full of a range of questions. Some are appropriate open questions and permitted closed questions. However, there are a significant amount of leading, prompting and suggestive questions that do not give Z an opportunity to find his own words (section 3.32), at times introducing new words or concepts, or inviting yes/no answers which will be at high risk of inducing acquiescence and 'unconditional positive responding' (section 3.37). This proves to be particularly problematic given, for example, the variable use by Z of the prepositions 'on/in/to' in relation to willy/bum, and leaves the court unable to decipher what Z actually meant.

261. Suggestive questions, introduced concepts and rephrased suggestions included:

- 'Does it hurt?/like this (bangs table)'.
- 'Did it make you cry?/(nods) yeah' – asked again in relation to more than one topic. Notably, Z later volunteers 'I didn't cry'.
- 'Do they tell him off?/yeah'.
- 'So are they pyjamas?/No' – but this results in a significant series of confusions. Z explains that he is wearing 'swarters' not pyjamas. This term is not clarified and it is impossible to understand what Z meant and therefore whether it might have had relevance to details subsequently elicited about clothing. DC B continues with questions about underwear and asks 'And what is your brother wearing?/He wear pyjamas/...And what pyjamas are they?/Superheroes'. Z then can't remember the name of the superhero nor the colour of the pyjamas. He is challenged and asked again 'You don't remember - you don't know what colour his pyjamas are?' and answers 'They're red'. Thus DC B effectively introduced the concept of pyjamas being worn. Z then responded as above, without clarification of which brother he is referring to. (If I accept M's evidence, it is U who has red superhero pyjamas, which at age 6 appears far more likely than Y aged almost 12, and Y does not fit both the top and bottom of the same set of pyjamas due to his size and prefers to wear a t-shirt and underwear in bed.) This is an important example of a novel concept being suggested, additional language/terminology issues, confusion over clearly identifying who Z is referring to, but leading to Z referring to a superhero pyjama-wearing brother, which may well be a form of acquiescence to the initial suggestion and providing an answer to please the questioner, and neither of them challenging or realising there was confusion and a lack of understanding.
- 'Did he take off your pyjamas, your trousers off?/no/Okay so what did he do with your bottoms?'.
- 'So you put his willy where you poo?/yeah' – this last point was significant because it followed a confused exchange involving the use of the prepositions 'in/on' and who was moving towards whom. DC B's rephrasing prevented Z from being able to clarify his meaning in his own words.
- This phrase using 'put his willy where you poo' is repeated later by DC B and Z acquiesces – but had followed a passage where Z had been saying 'he put his willy on top of my bum'. DC B then continues and persistently repeats the phrase 'where you poo' but Z instead refers to 'in my bum'. This fundamentally prevents a proper understanding of what Z is saying and meaning, particularly in the context of his 'unconventional way' of expressing positional language (cf. Triangle report).

- 'Did that hurt you?/yeah' – suggested in relation to 'on top of my bum'.

262. Some significant examples of the many leading questions included:

- 'What did he do to open your bum?/His hand (lifts hand)/His hands?/yeah/So he used his hand to open your bum./ (nods)' – no answer had been given to the question 'what did he do to open' before DC B led with the connection.
- 'So he put his willy where you poo?/yeah'.
- 'When you woke up the next day was Saturday?/yeah'.
- Further leading (and confusing) questions as to combinations of allegations and days, where DC B persists and pursues additional or different answers by leading questioning, for example:
 - (a) 'you said on Saturday that there was something that happened again with his willy/No I didn't/No? Nothing happened on Saturday?/(shakes head)/Okay. Did anything happen on Sunday?/No/Okay. So the only thing that happened was on Friday?'
 - (b) 'So the only thing that happened was on Friday, where he put his willy in your bum?/Yeah/And is that the only time he's done that to you?/Yeah/It is? Okay. Has there been any other times he has done that?/No (shakes head).'
 - (c) 'And on Saturday he hit you—he hit you again; yeah? And he also put cream on his willy/Yeah.'

263. There are other examples of confused discussions of dates and times, and an 8 year old child, who is only just on the cusp of properly understanding such concepts according to the guidance, should not have had questions of this sort pursued in this manner without proper consideration of his stage of development (section 3.79), let alone without proper information and planning regarding his vulnerabilities, and let alone with additional leading elements.

264. Inappropriate summarisation is undertaken at various points in the interview, contrary to the care that should be taken to do so at the end of each topic and only if appropriate (section 3.72).

265. Appropriate closure guidance is not followed. This does not affect the overall forensic value of the interview but is indicative of the flawed and inadequate exercise that had been undertaken, with scant proper application of the ABE Guidance.

266. It is argued by the LA and on Z's behalf that there is consistent use of volunteered vocabulary and descriptions, and persuasive congruent actions which form a core account:

- Particular terminology and vocabulary is repeated in the ABE interview as Z had used in his earlier accounts (although I note that there is fundamental lack of clarity as to his use of 'in/on/to' in relation to his bum, and there are numerous other potential confusions or failures to clarify what Z meant);

- He initially repeats what he told GG (although I note he adds in kicking);
- he goes on to describe slaps, kicks, pinching, willy on his bum, willy in his bum, willy in his poo, being carried onto his brother's lap, his brother shaking – all said to be striking descriptions of physical abuse and sexual contact;
- he uses descriptions of sensations: hearing a noise 'aaargh', a movement of shaking with bouncing up and down, a feeling of it being 'squishy and hurty', a reaction of it feeling 'disgusting' and 'dizzy' – these are not standardised but personal, they are not likely to be simply from watching pornography or some other indirect source;
- he was clear which brother he meant (although I note there may well be a lack of clarity relating to U and his superhero pyjamas just before the very first reference to putting 'his willy on my bum', and it is not clarified with Z beyond an initial naming of Y near the start of the interview whether he still means Y at any and all relevant points subsequently in the interview);
- In answer to the question 'have you ever told Mum about any of these things?' he says 'No, my brother says it's a private secret', thereby implying he has been told this by Y who has an awareness of wrongdoing and a desire to persuade Z not to tell their parents and/or Z is a boy expected to keep secrets more generally (although I note that his response is at least partly inaccurate as it is likely he had told M about the Hydromol cream incident, which is the reference made immediately before this question and the 'it' her refers to is not clarified).

267. I am reminded that the question of whether accounts given in an ABE interview are reliable in so far as they allege sexual abuse is a question of fact. I have borne in mind that even a substantial failure to observe the requirements of an ABE interview does not necessarily mean that a judge cannot properly rely on an ABE interview as being sufficiently reliable hearsay statements made by a child (**JB (A Child), Re (Sexual Abuse Allegations) [2021] EWCA Civ 46**).

268. I have borne in mind all the points raised in favour of treating Z's comments during the ABE interview as capable of being understood as to his meaning and its reliability. I note the range of breaches of the ABE Guidance that have occurred in this case. I take into account the range and implication of the vulnerabilities identified in both the 2021 SALT report which dates to 9 months before this interview, and the 2022 Triangle report which dates to 9 months afterwards.

269. It is significant that even at age just over 9 years old, some 9 months later, Z was noted in that Triangle report to experience fundamental difficulties as follows. These have clear implications in relation to undertaking a reliable interview process, and have particular relevance here given the breaches and details which have been explored above:

- *'difficulties with both receptive and expressive communication (understanding and conveying information)'* and that those issues were also evident to the Triangle assessor in the video of the ABE interview;
- *'challenging to obtain a full and accurate picture of what he is trying to say'*;
- *'did not consistently refute incorrect information'* and showed confusion when this was raised;
- expressed positional language *'in an unconventional way'*;
- substituted one term for another without realising (guitar/piano);
- Such that *'it may be difficult for Z to give reliable evidence due to his difficulties with both receptive and expressive communication'*.

270. I also note that the Triangle assessor did not consider Z was likely to acquiesce to suggestive questioning. However, examples of both resisting but also acquiescing to suggestive questions as discussed above can be found in the ABE interview 9 months earlier.

271. In the circumstances, the breaches of the ABE Guidance here make it far more risky for a child with Z's characteristics that their responses during interview will become prey to these very problems. Given that the breaches involve fundamental issues such as establishing an understanding of truth and lies, and examples of failing to permit or safely explore Z's own wordings and meanings, this is unfortunately just such an extreme case where it would be unsafe to attempt to parse Z's meanings and to treat the interview as a reliable piece of hearsay evidence.

DISCUSSION – SEXUAL & PHYSICAL ABUSE ALLEGATIONS

272. I turn now to consider the allegations that survived the above analysis and are set out at paragraphs 176-180 and paragraph 216 above, and weigh them against the other evidence, considerations and submissions.

273. I acknowledge and do not repeat here the submissions made to me and that I have summarised earlier in this judgment. I remind myself that I have not had the opportunity to hear Z's allegations challenged nor clarified, nor direct evidence from Y that might have bolstered his denials or challenged details of his or other's cases.

274. There was consistency as between Z's accounts to EE and GG regarding the scratch, and cogent details given in terms of his physical demonstration and description of it occurring when pushing away Y in bed when too close and too hot. I bear in mind that M told me she had not seen anything on Z that morning, but it was a small mark of 2cm length. I note that the first report of it to the school office was that it was accidental, but that is weighed against the repeated consistent account and the factors explained by EE. I have noted earlier in this judgment the words and manner which he used to speak to GG in particular, with calm focus and a flowing account.

275. I note the medical evidence that I have referred to above describing a 2x1cm vertical hyperpigmented scar which is consistent with Z's description of this action. That mark was not noted to be associated with dry scaly patches of skin that the medical

examiner felt were patches of eczema that were seen elsewhere on Z's body. I have taken into account the noted references to M and Z apparently referring to it being due to itching, but for the reasons discussed I am not persuaded that this means it was due to eczema. It is therefore more likely to have been caused by the scratch action as described by Z than to be from itching dry patches of eczema.

276. I take into account the argument that Z was noted to be aggressive at school both in V and London, whereas Y is not. Y was still 11 at the time the allegations were made and Z 8½. In that respect I also note the marked size difference between these two boys; Y at almost 12 years old in the religious festival photograph of May 2022 is significantly taller and larger than Z.

277. Y has no history of sexualised behaviour, misbehaviour, interest in pornography or access to inappropriate websites. There is no evidence that he has lied, save as to the concealment of the existence of A for which he apologised to CC and explained it was the parents who had encouraged this reticence. There is no direct corroborative evidence against Y.

278. Given his discussion with CC in April, it is clear that he is aware that pornographic videos can be accessed online. Z too appears to be aware that computers can be used to access images of naked bodies. Z noted that his older brother A was good with computers, and referred to seeing a police badge on a computer game. Clearly both boys are aware of the potential for the internet to give access to such material. They had both completed Keep Safe work with V Council and schools routinely cover such matters. There is no evidence to establish either way that either boy has been influenced by viewing internet pornography.

279. In that context, I of course note the particular history in this case where their adult brother A is a convicted sex offender, and I have discussed the concerns as to risk earlier in this judgment. There is no solid evidential foundation that he has introduced them to inappropriate material, visited them, discussed sexual matters with them, directly communicated with them or directly abused them, or otherwise has any connection with these allegations. There is evidence that both boys were taken through Keep Safe work in 2020 with V Council, where neither made any allegation of having experienced abusive behaviour and were considered to have a good sense of good and bad touches. Y told CC that he had been asked then about whether A had touched him and that he had explained that he had not. It is a factor, but not one that assists me in determining where the balance of probabilities should fall here.

280. I note Y's denials, upset and confusion. I note their consistency. I also note that, looking back with a fuller understanding of the way in which the LA and police pursued this case from the outset, his reactions need to be considered in that light. He was arrested for 'anal rape'. He was interviewed on the basis of a wide range of assaultative behaviour, but was interviewed in relation to anal penetration and possible injuries to Z's anus. Although I have not seen the pre-interview disclosure Y will have discussed with his solicitor, it is highly likely it referred to anal rape given that is what he had just been arrested for. The LA personnel had approached this from a perspective that was distorted to believe a 'disclosure' of anal penetration had been made and should be accepted without a more careful and thoughtful approach. That

- would have informed the discussion between him and CC in April 2022. He was therefore reacting, in his denials, to allegations that included anal rape. This has not permitted a more nuanced or graduated approach to the allegations and Y's responses.
281. The LA relies on the lack of outrage or sense of injustice shown by Y. Instead, he shows sadness. I note that Y was particularly upset on seeing Z by chance on one occasion 7.4.22, to the extent that Z comforted him. Looked at in the round, that can be seen as an unusual response by someone who has been wrongly accused. However, it is not an argument to which I can give a great deal of confident weight as it may be dependent on personality rather than citing typical responses.
282. The warm and affectionate relationship between the boys and their respective upset on not seeing each other cuts both ways, but does suggest that Z is unlikely to be harbouring rancorous feelings towards Y based on preferential treatment, access to the computer or other petty jealousies as has been suggested as might have existed by M. None of that has been seen between them.
283. Z is not noted to be a liar and EE's evidence is that he does not try to get other children into trouble. M's report that Z said 'I've made a mistake' does not provide much assistance to the court by itself save to point to a potential regret in the context of the family missing Y and Z realising that his discussions with teachers and the police had led to Y's absence. The nature of the mistake is unclear and might relate simply to having had those discussions rather than to having told any lie. However, it is in that context that I note that Z has not retracted his allegations. If he thought he had made a mistake by saying untruthful things, and was as upset about it as M described, it is reasonable to think that he could have corrected such a mistake by explaining that his allegations had been untrue. If in fact the mistake was to share secrets then there is no means of taking it back, hence no retraction, unless an 8 year old is then prepared to tell a wholly different and untrue story in itself, namely that the truths he had told were all untrue. He has not repeated or built on his allegations - a factor relied upon on Y's behalf. However, if he felt that speaking out had been a mistake, it is more likely that he would simply not speak further about it.
284. In terms of considering issues that touch on inherent improbability, I note here a feature of this case which is pointed out on Y's behalf:
'The judicial enquiry is yet further complicated by the most unusual fact that, in this case, the two protagonists share a bed. In most sexual abuse cases, there is no natural or explicable reason for the alleged victim and perpetrator to be so close to each other routinely. In this case, that proximity was routine. The potential for misunderstanding or accidental/innocent bodily contact was huge:
- a. Each child is, necessarily, in an intimate and proximate position towards the other, as they share a bed;
 - b. One child can mistake a kick to their body by the other brother as being intentional when it was not: it might be an accident or might have occurred during sleep yet they might reasonably or unreasonably respond with a kick, push or scratch;
 - c. Z is known to find it hard to settle, is easily distracted and, at school is known to be prone to hit out: any such movements might prompt a justified or excessive response from his brother;

d. In the ordinary use of the bed, Z might well have clambered over his brother to take the swiftest route out and this could have happened at any time when they shared the bed, for example if he needed to visit the bathroom or fetch a glass of water.'

I note that the proximity point cuts both ways in that it makes bodily proximity, enforced intimacy, touching and physical conflict more rather than less likely.

285. Further aspects relevant to improbability are relied on:

'a. The bedroom door was left open at night. The mother checked on the children frequently at night. This account was not challenged by the local authority.

b. Z would be asleep before Y went to bed.

c. There were three adults living in the home yet no one heard anything untoward.

d. Z does not complain of any pain or report making any noise.

e. The mother bathed Z that weekend and saw no marks.

f. Y was at the place of worship all day on Saturday yet Z made no complaints to his mother about the alleged conduct on Friday night. The mother confirmed that the boys would feel able to speak to her about their private parts, such as if they felt itchy.'

I also note that there would have been a great deal of time in any night when the adults would be asleep, but the boys would have been lying next to each other in bed. Also, although no marks are observed by M over the weekend, I note that both EE and the medical examiner saw the mark on his neck respectively before and after the weekend.

286. I note M's concessions as to conflict between the boys in her oral evidence, albeit bitty, confused, inconsistent (to the point of denying, agreeing, retracting), reluctantly conceded and thereby giving the impression of minimisation: the boys would 'get physical' for example over pen and paper; like 'normal children'; they argued over the computer; she placed a pillow in the middle of the bed as she said sometimes Y moved over in the night; that they often played around by fighting, everywhere, in the bed, in the drawing room; they did not wrestle. M also described the Hydromol incident in terms that do not conflict with Z's account, albeit they each have a different take on the source of the boys' annoyance and she places it into a different perspective, but nonetheless it corroborates a key aspect of Z's account.

287. It is additionally argued on the LA's behalf that the undermining of Z and attacks on his credibility by the parents and M in particular are corroborative lies and thereby indicate Z's veracity. While I can clearly see that such matters could constitute an emotionally harmful response to Z's allegations, I do not accept this analysis here. I am not satisfied that it meets the four relevant tests in R v Lucas, and I am also concerned that it is dependent on a degree of circularity which undermines its logic.

288. MacDonald J summarises in P [2019] when a lie amounts to corroboration and sets out the relevant part of Lucas:

"264. The four relevant conditions that must be satisfied before a lie is capable of amounting to corroboration are set out by Lord Lane CJ in R v Lucas as follows:

"To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded

that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."

265. Where the court is satisfied that a lie is capable of amounting to corroboration of an allegation having regard to the four conditions set out in R v Lucas, in determining whether the allegation is proved, the court must weigh that lie against any evidence that points away from the allegation being made out (H v City and Council of Swansea and Others [2011] EWCA Civ 195)."

289. The LA relies on the following:

- The parents' 'blanket denial' of physical and sexual abuse, particularly by M. These are said to be deflections borne of fear of the truth. It is argued that Z told them about and they witnessed examples of physical abuse. I note that Z said he did not tell M about penis issues. I also note that M acknowledged some limited fighting and squabbling at home, albeit perhaps inconsistently and possibly minimised. M also included the Hydromol incident in her statement. I am unclear that there is such a blanket denial for the LA to rely on. Neither parent is saying no/never to Z's allegations of sexual harm, but that they have not seen it and do not know what to think.
- M said she did not know where Z got certain words from and in particular referred to the words 'disgusting' and 'dizzy' and stated that these are not used at home, whereas 'disgusting' appears in her own statement (in English) and she used these words in her oral evidence. I note that M's evidence both written and oral was interpreted and I cannot be confident that the translation of particular words by a particular interpreter from English into her South Asian language and from her South Asian language into English could safely bear this nuanced analysis and I must therefore consider this point as unsafe to rely on.
- F sought to speculate that Z had extrapolated and embellished his account from witnessing a fight in a park.

290. In the circumstances of this case where shame, the fear of ongoing consequences and the horror of contemplating that one of your children might be sexually abusing another are clearly powerful forces, I cannot be sufficiently satisfied that the motive for these examples is a realisation of guilt and fear of truth but may well stem from those other obvious factors.

291. Another fundamental problem is that I need to decide that Z is telling the truth in order for the parents' evidence on which the LA relies to be clearly shown to be a lie. However, the LA is asserting that I should rely on this evidence from the parents to

reach my decision that Z is telling the truth. The last of the four conditions is therefore not properly met, and the circularity of the argument defeats itself.

292. In reaching the following conclusions I have reminded myself of and applied the key principles that are derived from the leading authorities and set out in detail in **P [2019]**, including the following:

*“270. Within the foregoing context, with respect to the legal principles applicable to the highly complex fact-finding exercise concerning allegations of sexual abuse in which this court is engaged, in the recent decision of **Re A (Children) [2018] EWCA Civ 1718**, the Court of Appeal once again emphasised the overarching importance, when determining whether or not the case has been proved to the requisite standard, of the court standing back from the case to consider the whole picture and ask itself the ultimate question of whether that which is alleged is more likely than not to be true.”*

293. On balance, in relation to allegations of physical and sexual abuse, I am persuaded that the LA has satisfactorily established as follows:

- Z has not lied about the behaviours he has described to EE and GG.
- For the reasons I have set out earlier in this judgment I am therefore confident that he was referring to his brother Y.
- He was scratched by Y on his neck during a moment of physical conflict due to proximity and heat in bed together, probably on the night before he spoke with EE on 4.3.22.
- Y has slapped him on more than one occasion, likely due to moments of sibling conflict such as use of the computer and lack of space in bed. This will have included slapping Z's bottom.
- Y smeared some Hydromol cream onto Z's face after having placed some of the cream on his own penis. Again, this is likely to have arisen due to sibling conflict because he was annoyed with Z seeing him naked and he was using Hydromol cream. M was aware of this incident which took place in the context of Y having just bathed and Z peeking at him.
- Y touched Z's penis.
- Y looked at Z's bottom.
- Y placed his penis in contact with Z's buttocks.
- The last three findings above relating to Z's penis and bottom cannot be found to have happened more than once, and the dates of their occurrence are unclear.

294. I am asked to find that Y has perpetrated sexually harmful behaviour towards Z. The LA has cited and reminded me of the most up to date definition of sexual abuse found in the Working Together Statutory Guidance of July 2018. I have considered the particular context of this case where their older brother A is a convicted paedophile but where there is no sufficient evidence of influence or abuse by him upon them and Y in particular.

295. I have considered the wide range of behaviours that fall within that definition, and also the wide range of behaviours that fall outside it. I note that it is possible that some of the behaviours found might have some sexual component, but equally these behaviours might not, and instead might be extremely unpleasant and annoying possible ways to (for example) rile, dominate, tease or bully a younger brother. For the avoidance of doubt, these are possible examples of types of behaviour that might arise and are not findings.
296. I have taken into account all the contextual matters discussed in detail above. However, the evidence overall does not permit findings as to context that could identify the motivations or more exact labelling of the types of behaviour shown by Y. In the circumstances, I consider that it is not possible for me to make a finding on the balance of probability that the last three findings relating to Z's penis and bottom represent the perpetration of sexually harmful behaviour by Y, particularly bearing in mind the inevitably narrowed range of reliable evidence that I can consider. I am indeed suspicious that Y may have engaged in sexual behaviour towards Z, but suspicion is insufficient to make a finding.
297. I make it plain: I have not relied on the information that I have concluded should be disregarded as unreliable from the Initial Questioning exercise and the ABE interview. This emphatically does not mean that Z was lying during those interviews, but that the way they were conducted made the answers that were given unsafe to rely on as proper accounts of what Z was trying to communicate. The information in those interviews does gravely increase my suspicions, but of course I may not take that information or those suspicions into account in considering my findings above.
298. I suspect it will take careful work by appropriately skilled professionals, well away from the stresses of court proceedings, to support both boys and this family to achieve a co-operative, open and honest understanding of behaviours and motivations and fears, and to take positive steps to eliminate risks of such behaviour being repeated or escalating in any way.

EMOTIONAL HARM & FAILURE TO PROTECT

299. This aspect of the case brought by the LA must now be seen in the light of the above findings. I shall deal first with the allegations made in relation to the parents' attitude to A and then turn to the remaining allegations, attitudes to Z, emotional harm and failure to protect.
300. I have noted the cogent submissions made about the context that must be considered here:
- There are significant difficulties of language which prevent good clear communication and nuance. Interpreters have not always been available. Care needs to be taken as to the weight applied to particular exchanges and comments.
 - Any family would be likely to experience feelings of shame in relation to A's convictions. This family shares devout conservative religious beliefs with their wider family, friendship group and local

and place of worship community. Both parents' evidence clearly demonstrated their feelings of shame and fear.

- Being members of a minority immigrant community can mean there will be a sensitivity to being misunderstood or experiencing prejudice. Lack of understanding or sensitivity to cultural context by members of agencies can lead to a reluctance to be open with professionals, and involvement with the authorities is likely to be perceived as problematic.
- F's cognitive difficulties only came to light at the very end of 2022, after many of the meetings and discussions which are relied upon had taken place.
- I am also cautioned against applying too much weight to the parents' demeanour in the above context.

ATTITUDE TOWARDS A & RISK -

301. I have already discussed in some detail much of the evidence relating to the approach of the family to A. The history of his offending is accepted by the parents, and they admit that they did discourage the boys from speaking about A. It is clear that the boys tried to comply with this but ended up revealing an older brother's existence and that they had been asked not to talk about A.
302. It is also clear that the parents co-operated with V Council's risk and safety work to V Council's satisfaction. They complied with visits, risk assessments, meetings, safety agreements, Keep Safe work for the children. The case was stepped down and closed. They informed V Council of their intention to move to London. There is a positive Closure Report indicative of V Council's confidence in the parents.
303. As I have already discussed above there is no sufficient evidence to establish illicit or inappropriate contact between the children and A. In any event, the parents had agreed to supervise any contact he might have. It appears that they chose instead not to permit any such contact save for a short visit with the V social worker present just before they left V, and overhearing the speakerphone conversations that M explained that she has regularly with A. There was a single example that Y gave of a phone call where his homework was discussed, but which did not depart from M's evidence that this was a joint call which she conducted. The LA asserts that the content of her first and second statement establish she has lied about this in that she concedes this phone call took place whereas she had earlier stated that he had 'not seen or spoken to them in person or virtually' since that last short supervised visit. I am not persuaded that this is a significant lie. There is no evidence he has visited, had other direct contact, one-to-one video chats or one-to-one calls. There is therefore no evidence of illicit contact that the parents would need the children to hide.
304. The children's new schools were not directly informed by the parents of the history relating to A. However, I note that M Primary School was involved in the V Council meetings and did have full access to information. M's evidence, which I accept, is that there could be no intention to keep this information from the children's new schools as

she assumed that M Primary School would have passed on its information in relation to the children. She was correct in that assumption, albeit she was unaware that M Primary School had failed to pass on complete records immediately and this information was only shared after Z's allegations had been made.

305. There is not sufficient evidence before me that the parents, M in particular, attempted to influence the boys further after the allegations arose. Y admitted A's existence to his foster carer on 15.3.22 and to CC on 8.4.22. M had not seen him at the contact arranged on 30.3.22, only F had visited. From this I can be confident that the encouragement not to speak about A, which Y referred to on 8.4.22, had come before Z's allegations in early March 2022.
306. Although there are suspicions raised as to what the parents may have been saying to the boys in their shared South Asian language on the few occasions alleged at contact or on the street, it is not possible to reach any clear findings in that respect. I have not heard evidence from the foster carer who noted M's interaction with Z on the street, and how what she reports Z said might or might not fit with M's explanation that she was discouraging Z from talking or asking about A on the street. It is simply not possible to know what F or M had said in their shared South Asian language. In the context of my finding above, it becomes even less likely that the parents were attempting to encourage ongoing concealment by the children, particularly where they themselves had by then discussed A with CC and the police who were well aware of his convictions, the background and his whereabouts.
307. I heard convincing evidence from both parents as to the shame they felt, the loss they feel (particularly of A's future prospects), the fears they have for his welfare. It is entirely understandable that they would not want A's convictions and situation to become known in the general community and that they should have a fresh start. It was, however, bizarre that M attempted to deny at one point that the family had wanted a fresh start as recorded by the V social work documents. A fresh start would be reasonable to want in these circumstances. It is suggestive of a thread visible in M's evidence and approach: that she is wary of admitting difficult issues openly or being picked up on matters that she fears (whether rightly or not) might reflect badly on her and the family.
308. The LA asserts that the parents, M particularly, denied A's existence on 7.3.22 and any previous social work involvement when in discussion with CC at the school. M denies this and points out the lack of adequate interpretation, that she thought she was being asked about how many children she had living at home and she was intensely worried about these allegations she was just hearing about. Given CC's subsequent oral evidence about how anxious and upset M was, asking for water and to sit down and calling on Allah, it is inappropriate to place too much weight on M's responses on that day. This is borne out by DC B's note in the police records from April 2022 that when M was discussing A with him she said she had not mentioned it on 7.3.22 as 'her head was all over the place' due to concerns about Z and Y.
309. I note that by the next day she was discussing A with the police, and was sharing information with CC at the meeting on 9.3.22. While it may be chronologically correct that the parents did not discuss A with the agencies until after V Council had revealed

his existence and convictions, given the overall picture, I do not consider that the LA have established their case in relation to the parents 'refuting' or denying his existence or refusing to share information about him.

310. What is more problematic is the question of the parents' insight or attitude. M's first discussion on the topic with CC was that he is living alone and the 'problems have finished'. Both parents indicated that their understanding of A's offending was actually very limited until late last year, despite the work done by V Council. They have become more closely aware following the police disclosure in these proceedings, supported by legal advice and representation. It is true to say that even with general work done by V Council, the parents would not have had sight of the police statements, probation report and sentencing remarks until the police disclosure within these proceedings. M went to A's sentencing hearing but there was no interpreter. I can appreciate that V Council may well have been able to carry out risk assessment and family assessment work with only the outline being known - namely A accessing inappropriate material on the internet involving indecent images of children.
311. It is clear that until recently they had been prepared to accept A's suggestion that he had somehow been tricked or mistakenly fallen into possession of these images. They appear now to have better insight into his responsibility for possessing, keeping and trying to hide the images.
312. However, it was notable that both parents experienced significant distress and concern when considering A. They both became animatedly upset when discussing their feelings, the impact on A, their concerns for his wellbeing and how much the younger children love him. I guard against making findings based on demeanour, but there was an unavoidable emotional component associated with their respective discussions of A, particularly from M.
313. They both found it hard to consider that A may pose a risk to the children. In F's case this appeared to be primarily connected with A not having shown interest in spending time with the children and preferring to be alone and F never having witnessed any such risk. F also stated that he had rarely spoken with A about his convictions and does not do so now. M's approach was more variable. She could occasionally voice an acknowledgement of some sort of risk and acknowledged that A had shown a sexual interest in children by virtue of the possession of the images, but she could not connect that with any active risk to her younger children as she had 'never seen it'.
314. There was also a reluctance or failure to acknowledge that there was a risk that the children might have been exposed to indecent images due to A's interest and possession of such images. M was adamant that the children had no access to A's devices or his bedroom. F's evidence was that the children had access to his room while playing around the house, particularly during lockdown. I prefer F's account. It is more realistic, more natural, and M's evidence involved frequent minimisation. I note the context of the Keep Safe work which did not in fact reveal any exposure, but that the parents appear to have relied on that work, as M revealed in her oral evidence, rather than on their own engaged parenting to address these issues. I consider that M

was here attempting to minimise the level of risk the children might have been exposed to.

315. Overall, while I do not find that there is any actively risky collusive behaviour evident nor any active failure to protect from the risks posed by A, I am satisfied that both parents show significant lack of engaged interest in the risk issues, and a lack of insight and understanding. I cannot be certain as to the exact reasons, which should be the focus of appropriate work to assist them, but in both their cases it is likely that ignorance, shame, aversion, and a natural desire to minimise such an issue relating to a loved family member may all be in play. In F's case it is also likely that his limited cognitive abilities will have made it harder to understand abstract concepts of risk, and to consider that simply because you don't 'see' something does not mean it is not a problem.
316. I also repeat here my observations made earlier. The boys have not had a complete explanation of why A does not live with them. F said that they have been told he is away studying, and expressed with some despair and distress the impossibility he felt of attempting to explain A's situation to his younger sons. He said that despite the Safety Plan and related work with V children's services that the parents have not received advice on how to explain A's situation to the children. While this excruciating difficulty is on the one hand understandable, it does leave the boys at risk due to: believing an untruth, being discouraged from discussing or naming A, and not knowing that A himself may pose a risk to them.

ATTITUDE TOWARDS Z & HIS ALLEGATIONS -

317. The LA's case is that the parents labelled Z a liar at the meeting with CC on 9.3.22, and have subsequently sought to minimise and undermine Z's account.
318. The LA's claim that M was 'not surprised' when she was first told about Z's allegations can no longer be justifiably maintained given CC's own oral evidence of M's anxiety and distress that I have referred to above. The alleged lack of surprise was noted in CC's recordings, whereas M's anxiety and distress was not. It suggests that CC's notes of the parents' reactions is at best partial. M's response was that she said she was surprised at Z not having told her anything.
319. CC's evidence was that both parents were pleading with her on 9.3.22, in tears, touching her hand and using the words liar/lying in English to describe Z. There was an interpreter present. F's vulnerabilities were not known and there was no advocate or intermediary. Her note reads: 'M believes Z wants everything for himself, he wants computer, room everything; M and F say Z is talking lies, he tells lies at home all the time; M says Z has told her that he was angry and went to school to tell professionals about Y, "*Z is crying and asks for Y; he lies but he is missing his brother*".'
320. The parents' evidence is that it was CC who used the word liar, that they were emphasising that maybe a mistake had been made, that the South Asian language interpretation was an imperfect exercise and they were referencing story-telling, and they were very upset about a great deal at that meeting including not having seen Y. I bear in mind that her earlier note of 7.3.22 was inadequate and partial.

321. I have no doubt that they felt desperate. I have no doubt that they would not want, at that early stage, to believe that one of their children had anally raped another of their children. I also have no doubt, given my earlier consideration and findings on this issue, that they did not feel that they were met by an open-minded sympathetic social work team. Instead of being open to the parents' fears and worries, prepared to look at the situation in the round with dispassionate curiosity alongside child protection principles, there was a culture of belief centred around an inaccurate allegation of anal rape, which was pursued from an early stage without access to proper information as to Z's vulnerabilities that require particular care to be taken when managing and interpreting his communication.
322. In the circumstances of CC's note indicating that the level of detail was pointed out to the parents as a probative factor, I have no doubt that they were expected to believe Z's allegations without demur. Their impossible position was not accommodated within the LA's approach, where to immediately believe Z meant that Y would be condemned, and would close off the possibility of looking at the whole picture in a careful way. This approach could well push parents in this awful plight into a more desperate position. I conclude that there may well have been the use of the word liar/lying, however I do not consider that they would have been adequately listened to as to what they were trying to raise, explore and understand, nor were they supported by an open-minded approach from the social work team in order to assist them to a careful understanding of how to take Z's allegations seriously without losing sight of Y's needs and their own agonising position.
323. Like many of the issues in this case, an initial approach that failed to follow good practice has had many implications and coloured much of what has followed.
324. The LA and Z's Children's Guardian point to M's surprisingly cool reaction to seeing Z's ABE interview. She did not express concern for Z, nor puzzle over his description of actions and demonstration of movements. She demurred from accepting that there was much to see in his interview and instead raised a few issues of factual error and that she had not heard him crying or had any complaints from him over the weekend. The more questions she was asked on this, the more entrenched and shut-down her responses became; even to the extent of declining to make the connection between her own account of the Hydromol incident and Z's account of Y putting Hydromol cream on his face after putting it on his own penis. It was a striking episode of her evidence.
325. Reliance is also placed on her statements in which she suggests that Z is a fantasist, and where she cites the Hydromol incident as indicative of Z being capable of 'instigating situations' and then passing the blame onto a sibling. They also rely on M describing Z as wanting everything and feeling jealous, for example over the computer. However, I do not follow their argument that this is also demonstrated by M behaving appropriately when alerted by J Primary School about Z's need for guidance on boundaries.
326. The LA also criticises M's suggestion that Z may have seen material on the internet while using her old mobile phone. She states that she may not have sufficiently overseen the children's access to the internet due to her busyness on first moving to

London and when the children were waiting for a month before school places became available. I consider that it is quite natural for these parents, whose oldest son accessed indecent paedophilic material on the internet, to consider that the internet might be the source of the problems. However, it is notable that M does not include Y in this consideration, as to whether he may have sourced inappropriate behaviour from the internet, rather than her approach simply that Z may have sourced a false allegation.

327. F's evidence in reaction to questions about what he made of Z's words and gestures in the ABE interview was that he wondered whether Z may have adapted his allegations from having seen a fight taking place in a local park. I found his attempt to explain this did not really make much sense and appeared to be casting around for some external source. F has repeatedly stated that he does not know what to believe.
328. The LA seeks a finding that there is evidence of a 'parental narrative' that Z has made allegations up out of rancour or jealousy, founded on seeing inappropriate material on the internet. The LA asserts that this narrative and particularly M's overall approach both undermined Z and minimises their ability to perceive risk and keep the children safe.
329. The LA also makes a connection with Y mentioning Youtube videos to CC on 8.4.22, and that this is therefore an example of the parental narrative and his co-option into it. I note that Y had no contact with M until after this date. He had contact with F on 30.3.22 when there was some initial discussion in his South Asian language, contrary to the request that the parents speak in English or that an interpreter would be provided. I note that F speaks little English and the language used within this family is a South Asian language. There was no interpreter present. While F needed reminding, I note that this was their first contact, after tumultuous events and without an interpreter. When the supervisor reminded them to speak in English I note that Y responded with an answer in English: 'No I do not like my foster placement'. This does not establish any coordination or manipulation of Y by informing him of what to say as part of a parental narrative.
330. Despite having spent a month in his parents' care after he made the allegations and Y had gone into foster care, there has been no suggestion that Z has been punished, told he is a liar, or otherwise made aware of any doubts or issues his parents have had with his allegations. Nothing of the sort has been mentioned by him to anyone. I have noted that all contact with Z has shown warm, loving, uncomplicated affection between all parents and all siblings. I do not consider that there is sufficient evidence to establish a finding that the parents have exposed Z to significant emotional harm in this way or to their initial use of the word liar at the first meeting with CC or to their subsequent doubts or reluctance to believe him.
331. I am sure that the parents love all their children deeply. They have stated that they do not know what to think and are open to the possibilities. However, it has emerged clearly from their evidence that the parents have found it far harder to think that Y may have done something than that Z may have invented something or 'made a mistake', and it is this line that they have pursued. This has not been assisted by the LA's approach, which if anything is likely to have driven them further into an

entrenched effort to find an alternative approach than that pursued by the LA. It would be a mistake to characterise this as a 'narrative' with its connotation of artificiality and device. But I do consider that the parents have a resistance, a blind-spot or a shut-down approach which has prevented them from being able to perceive or accept the implications of Y behaving as Z has described. This resistance is to some extent understandable given what they must fear it might mean for their family, but I am satisfied that it has left Z at significant risk of harm due to his parents casting around for ways that point away from his allegations being true and by so doing disabling themselves from developing their insight and being fully open to any needs he may have for their protection.

332. Both parents have denied being informed by Z about any abuse from Y. The evidence from Z's account to EE is that his M had reacted to some behaviour by Y towards Z by shouting and by asking Y to read the holy book, and from his account to GG that Z had informed his mother about being scratched and slapped Z but did not inform his parents about the last three findings made above relating to his penis and bottom.
333. There is no evidence on which to base a finding that either parent was aware of the occasions when Y touched Z's penis, looked at Z's bottom, or brought his own penis into contact with Z's bottom. There is no evidence therefore for a finding that they failed to protect Z from this behaviour.
334. Both parents have denied any fighting or substantial conflict at home. M's evidence in relation to the boys' behaviour towards each other and whether they fight or playfight has been referred to already above. It was another example of a topic that was notable for being denied, reluctantly conceded and inconsistent. I note her own evidence about the Hydromol incident where Z peeked in on Y, Y reacted by putting cream on Z's face and Z was angry and complained to her about Y's behaviour. I note her own evidence of having to put a pillow between the boys and Y moving over in the bed.
335. It would be most surprising if boys of this age were not occasionally horsing about, physically troublesome and challenging towards each other, particularly where they are obliged to share a modest sized double bed and access to a computer. The additional context here is that Z is smaller than Y and can also be restless and physical in his responses.
336. Given M's inconsistencies on this topic and minimisations discussed above, I conclude that M is likely to have been made aware by Z of altercations, anger or fighting when his older brother has slapped or scratched him, as he has claimed. I also consider that it would be highly unlikely that F was not also aware of occasions when there was some physical fighting between the boys and slaps or a scratch being inflicted by Y.
337. It is difficult to characterise this as significantly harmful 'physical abuse' and 'failure to protect' in these circumstances, due to how common such behaviour can be and that they are unpleasant but not particularly severe examples of physical assault between brothers. Two observations follow however: there is a significant enough age

and size difference that Z needs to be appropriately supported; and as I have discussed above, denial and minimisation by his parents leaves him at risk of being scapegoated, his needs not being met, and his safety not protected. Accordingly, I am satisfied that this leaves Z at risk of significant harm.

338. Evidently, Z has felt able to disclose this limited type of behaviour to his mother. His own evidence establishes that he had not disclosed Y's behaviours relating to his penis and bottom. It is not possible to establish on the balance of probability that this reticence is due to a fault in the parents' care of the children rather than a host of wider issues, particularly where my findings are necessarily limited to concluding that those incidents took place once. Accordingly, I do not find that this is made out as a threshold criterion, albeit this too is likely to require careful understanding and work so that the children feel able to share information openly.

339. Overall, for all the reasons discussed above, I am satisfied that all three children are at risk of significant emotional harm due to likely exposure to and either direct or indirect involvement in the dynamics and deficits discussed above that relate to their parents' difficulties in understanding and thereby managing risks; in being open, accepting and insightful into the boys' behaviours; and in identifying and meeting the boys' needs in this complex and sensitive context.

340. That is my judgment.

HHJ LAZARUS

29.3.23

APPENDIX A

Agreed list of issues for the LA to address:

1. When the parents told V Council that they were going to move to London, given that the CIN plan was expected to end so shortly before they moved and there being no statutory requirement for any notification to X London Council, V Council could have asked for the parents' consent to send a referral to X London Council.
2. V Council could also have informed the V Council schools under their usual CIN multi-agency communication that the plan was ending and the children were moving to London, which could have assisted in ensuring the information travelled to the new X London Council schools with the boys.
3. School(s) should have specifically requested for incoming children a formal request for:
 - a. All electronic records;
 - b. All written records; and
 - c. Any details of social work involvement/Child Protection concerns.
 - d. In addition to requesting paperwork, there should be direct communication, preferably verbal, between the designated safeguarding leads at the previous and new schools, to confirm that all relevant safeguarding information has been sent and received.
4. Policy throughout X London Council schools uses the word 'disclosure' throughout, which is inappropriate and not in line with best practice/Guidance.
5. The training provided to schools staff regarding children making allegations of physical, sexual or emotional abuse needs to be explored as it would seem likely that the training is consistent with the policy, and therefore encourages use of the word 'disclosure'.
6. Contemporaneous notes need to be taken when a child makes any allegation of physical, sexual or emotional abuse against a third party.
7. There should be a record of both questions asked and answers given. If not immediately as soon as possible following a meeting where allegations are made. If it is not possible to make notes during the conversation with the child, notes should subsequently be made by the member of staff immediately after the meeting, and *before* they have any other discussions, including with other staff members, about what has been said.
8. It needs to be made clear within the policy that contemporaneous notes ought to be kept and stored securely (electronically if possible). This includes any handwritten notes even if, only key words are noted down and later entered onto any electronic system.
THIS DOES NOT INFRINGE GDPR.

9. The response time in this case was left wanting. The Local Authority ought to have liaised with the police to ensure there was attendance by police and a social worker attend prior to the end of the school day.
10. MASH recording processes at the LA require review. Training may be required for staff taking calls as to the importance of accurate recording.
11. The local authority ought to have sent the Form 87A to the Police without delay, at the time the officers arrived at J Primary school they still had not received the same. The police did not receive the 87A until late morning on 8 March 2023.
12. Where there have been serious allegations of child protection concerns, an experienced social worker ought to be in attendance – if possible – with another individual from the local authority who is tasked with taking notes/record keeping.
13. If a relatively junior social work professional responds to a MASH referral requiring joint Police attendance, they ought to have a senior social worker on hand to support and offer guidance.
14. Social workers tasked with undertaking a joint section 47 enquiry ought to ensure the welfare of any children they or the Police engage with as part of the process.
15. Training of first responding social workers should be reviewed. This should include the importance of contemporaneous notes, accurate record keeping, ensuring the welfare of the children they are meeting with, and their working relationship with the police during joint s47 enquiries.
16. If any child is subject to an Achieving Best Evidence interview, the attending social worker ought to ensure that the child is appropriately supported and consideration is given as to whether that child requires an intermediary. Enquiries should be made of the child's school as to whether the child has or is suspected to have any additional needs, and the child's level of English and potential need for an interpreter. If not ABE trained themselves, the attending social worker ought to have relevant knowledge and experience regarding ABE interviews and good practice in interviewing children and young people, and be prepared to challenge the police approach if required.
17. If any child is subject to serious allegations requiring them to be interviewed under caution by the Police, the attending social worker ought to ensure that that child is:
 - a. appropriately supported (including whether the appropriate adult identified is suitable);
 - b. is supported in interview;
 - c. that the arrest of the child is undertaken with the child's welfare in mind;
 - d. consideration is given as to whether that child requires an intermediary and/or Appropriate Adult and if so, that is to be arranged prior to any interview;

- e. the child is accommodated appropriately; and
- f. ensure that the child is represented by an independent criminal defence solicitor; g. there is liaison with the police.

18. A child that is not under arrest should rarely be required to travel alone with Police Officers to a Police Station for the purposes of providing an ABE interview.

19. The management oversight of decision making within care proceedings requires greater attention, eg:

- a. Use of the word disclosure by many of the professionals was not corrected;
- b. Remit of assessments ought to have been made clear during any professionals meeting;
- c. Any meeting amongst professionals ought to have a clear agenda and minutes of what was discussed; and
- d. Particular caution is required if considering an assessment of parental insight into a disputed fact, which has yet to be determined at a fact finding hearing.
- e. It was open to the assessor to complete her assessment on an either or basis in line with the letter of instruction and not seek to resolve disputed facts. For the avoidance of doubt the LOI stated:

You should express your conclusions regarding factual matters but you should not seek to resolve disputed facts, which is, of course, the responsibility of the Court. Where appropriate, it would be of assistance if you could express your opinion on the basis of alternative findings regarding factual issues.

f. There has been consistent and substantial noncompliance with directions in these proceedings; court orders should be routinely reviewed during all case supervisions to ensure social work tasks are being progressed.

g. When care proceedings are ongoing, the quality of the legal advice and representation being provided must be considered as part of the management oversight.

h. The allocated social worker's specific knowledge and professional experience must be considered in relation to the case factors. Inter-sibling sexual abuse must be recognised as a specific area of practice which requires particular knowledge and skills. Where there have been allegations of sexually harmful behaviour between siblings, management oversight must consider any need for additional learning for the social worker, such as consultation with more experienced/specialist staff, internal or external training, review of published research and practice guidance, and support or co-working from an experienced member of staff.

i. When parenting assessments are being completed 'in-house', there must be rigorous consideration of the assessor's knowledge and experience, comparable to the consideration given when considering Independent Social Workers. The LOI, including the assessment methodology, must be approved by all parties before the assessment starts. It must be specified in the LOI whether or not the assessor is expected to speak to the child(ren) and the expected purpose of any conversations with the children.

j. In cases that include allegations of inter-sibling sexual abuse careful planning is required to consider the promotion and/or restriction of such contact.

k. There needs to be consideration of the information sharing with parents when allegations are made

l. Guardian(s) should be invited to attend all professionals meetings to assist with a degree of independence and to ensure the voice of the child is heard.

m. Interpreters qualified to translate the correct language and dialect should be present in person for all significant conversations with families. It is not appropriate to rely on non-professional interpreters or telephone interpretation for discussions where assessments are being undertaken or complex information is to be shared.

20. Questions for the Local Authority:

a. How many front line/first response/emergency child protection social workers are ABE trained?

b. What training around the ABE interviews is provided to social workers who are not ABE trained?

c. What training is provided to all social workers regarding their role during police ABE interviews of children?

d. What is the LA's policy and/or usual practice regarding the use of the words 'disclosure' and 'allegation', and specifically, in cases where there has been an allegation of sexually harmful behaviour between siblings?

e. What specialised support/training is available to social workers regarding harmful sexual behaviour?

f. What legal power was exercised to retain Z and U at school on 7 March 2022.

APPENDIX B

a. The first point of reference is Section 11 of the Children Act 2004, by which police forces and chief constables are required to ensure they discharge their functions having regard to the need to safeguard and promote the welfare of children.

b. Police and Criminal Evidence Act 1984 Code C/8 covers conditions of detention:

‘(8.3) Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition. ...

(8.8 C) A juvenile shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise them if they are not placed in a cell or that a cell provides more comfortable accommodation than other secure accommodation in the station.’

c. In **L (A Child), Re [2017] EWHC 3707**, Francis J criticised the Metropolitan Police for the circumstances of the arrest of another young boy from an immigrant family, a 13 year-old boy, as part of a murder investigation surrounding the death of his sister. He said (emphasis added):

‘51. I accept, of course, that there will be occasions when an immediate arrest of a suspect known to be highly dangerous will require such action. I have heard nothing at all in this case which could possibly justify such action against this boy. It would be inappropriate for me to comment on whether the police were justified in making an arrest. However, I would like to think that, in future, young and potentially vulnerable suspects who need to be arrested could be protected from the shame and horror of a public arrest. The presumption of innocence is as alive now as it has ever been in our society and I see no reason why the police could not, for example, communicate with the head teacher of the school and arrange for an arrest to take place in a private place in the school. V will almost certainly never forget the horror and shame to which he was on that day exposed.’

d. The following observations can be made in relation to the police management of Y:

- Given Y's age, the arrest appeared to be rushed and lacked any adequate planning;
- The arrest was based on what appear to be a set of assumptions or misunderstandings of Z's allegations;
- There was no immediate risk or danger posed by Y to anyone else, nor risk of flight;
- Y's arrest did not appear to differ from the arrest of an adult for such charges;
- No allowance was made for his status as a young child only just above the age of criminal responsibility;
- The arrest took place in public, immediately outside his place of worship and religious education;
- No thought was given to taking Y voluntarily to the police station, particularly given the co-operation of the family and especially F who was there with the police, and speaking to Y there with appropriate support and safeguards in place, and arresting him there as necessary;
- Y's father was not told what was planned nor of the charge and, when the horror of the arrest unfolded, he was prevented from comforting Y who consequently had nobody to comfort him;
- Y was held in silence and without any understanding of what was going on for about 1.5 hours in a police car in a yard outside the police station;
- Y was kept in an adult cell;
- Y was initially denied a basic need to have water to drink, and given that he was fully supervised there appeared to be no rationale based on any risk to the obtaining of forensic samples;
- Y spent some hours in clothing provided by the police when he could and should have had his own;
- Y had to request an additional blanket;
- Y was woken or kept awake for significant periods throughout the night such that he only had about 2 hours of continuous sleep at any one point;
- The taking of intimate samples was delayed and took place in the middle of the night at around 3am, additionally the consents were initially taken from F without an interpreter and had to be repeated in the early hours of the morning;
- At stages, Y's F was treated as the appropriate adult when he clearly speaks little English, and has some significant degree of cognitive impairment – the combination suggests the police are

unlikely to have checked adequately on F's ability to act as an appropriate adult;

- Y was interviewed the next morning when he was likely to have been exhausted, and exposed Y to several questions that were inappropriate and had no basis in the evidence (for example, questions about whether Z's anus would show cuts, stretch marks or bleeding).
 - There appears to have been little or no consideration given to Y's welfare needs balanced against the needs of the investigation.
- e. Most unfortunately given Y's age and the importance of managing such a young suspect correctly, both of the arresting officers failed to remember to save their body-worn camera footage of the arrest correctly. A specific step needs to be taken to save the footage for a specified longer period such as five years once the footage has been downloaded. That download often only completes many hours after the camera is docked following its use. The footage is only kept for a default period of 30 days unless that step is taken at that delayed point. It appears that this is what happened in this case. The arresting officer gave evidence of her regret and that she has changed her practice now to always save the footage separately onto the case file to avoid such an error, and if necessary she will also now create a case file if none yet exists in order to do so.